No. 02-299

IN THE

Supreme Court of the United States

MAR 3 2003

ENTERGY LOUISIANA, INC.,
Petitioner,

v.

LOUISIANA PUBLIC SERVICE COMMISSION, *et al.*,
Respondents.

On Writ of Certiorari
to the Supreme Court of Louisiana

JOINT APPENDIX

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March 3, 2003

PETITION FOR CERTIORARI FILED AUGUST 22, 2002
CERTIORARI GRANTED JANUARY 17, 2003

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Petitioners' Appendix to the 02-299 Petition For A Writ Of Certiorari at the following pages:

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Investigation of La. Power & Light Co.'s Rates, Charges, Servs. Rendered & Operations, No. U-20925, 1998 WL 1285300 (La. Pub. Serv. Comm'n Dec. 22, 1998)..... 24a-84a

NINETEENTH JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA
DIVISION "D"

2001-CA-1725

ENTERGY LOUISIANA, INC.,

Appellant,

v.

LOUISIANA PUBLIC SERVICE COMMISSION, *et al.*,

Appellees.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
2/18/99	2	INJUNCTN Remarks: 39 attchs . . . jl
		* * * *
2/18/99	7	MT/STAY
2/18/99	8	AFDVT
2/18/99	9	TRO
		* * * *
6/31/00	13	CASE/SCHED
9/07/00	14	MIN/ENTRY
9/29/00	15	MT
11/16/00	16	MIN/ENTRY
		* * * *
12/26/00	18	BRIEF

DATE	NO.	PROCEEDINGS
12/26/00	19	MEMO
1/18/01	20	MEMO Remarks: 29 attchs . . . j]
1/31/01	21	MIN/ENTRY
3/9/01		OPINION FILED
3/15/01	22	EXT/MIN
3/15/01	24	EXT/MIN
		* * * *
4/09/01	26	MT/S/APP
4/25/01	27	NTC/APPEAL
5/08/01	28	MIN/ENTRY
		* * * *
5/10/01	31	SUPR/COURT
5/29/01	34	MIN/ENTRY
		* * * *
6/12/01	36	FINAL/COST
		* * * *
4/10/02	41	FND/SC/WRT

SUPREME COURT OF THE
STATE OF LOUISIANA

2001-CA-1725

ENTERGY LOUISIANA, INC.,

Appellant,

v.

LOUISIANA PUBLIC SERVICE COMMISSION, *et al.*,

Appellees.

RELEVANT DOCKET ENTRIES*

DATE	PROCEEDINGS
7/13/01	Original Brief on the Merits on Behalf of Appellant Entergy Louisiana, Inc. (nf)
7/13/01	Exhibits (2 vol.) to Original Brief on the Merits on Behalf of Appellant Entergy Louisiana, Inc. (nf)
8/16/01	Reply Brief on Behalf of Appellee, Louisiana Public Service Commission (nf) (dl)
11/30/01	Oral argument
12/12/01	Post-Argument Brief on Behalf of Appellee, Louisiana Public Service Commission (dl)
12/14/01	Post-Argument Reply Brief on Behalf of Appellant, Entergy Louisiana, Inc.
12/14/01	Exhibits to Post-Argument Reply Brief on Behalf of Appellant, Entergy Louisiana, Inc.

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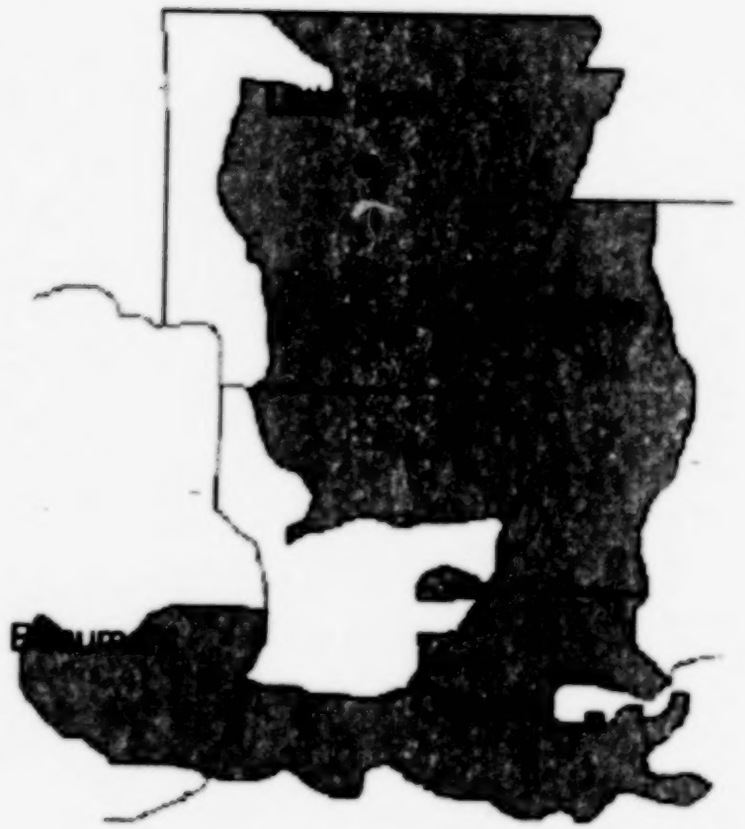
* Compiled from the pleadings on file with the Supreme Court of Louisiana.

DATE	PROCEEDINGS
4/03/02	Opinion filed
4/17/02	Application for Rehearing on Behalf of Appellant, Entergy Louisiana, Inc. (rc)
4/17/02	Exhibits (1 vol.) to Application for Rehearing on Behalf of Appellant, Entergy Louisiana, Inc. (rc)
5/3/02	Opposition of Appellee, The Louisiana Public Service Commission to Application for Rehearing of Entergy Louisiana, Inc. (rc)
5/15/02	Response of Appellant, Entergry Louisiana, Inc. to the Opposition of the Louisiana Public Service Commission to Application for Rehearing
5/15/02	Exhibits (1 vol.) to Response of Appellant, Entergry Louisiana, Inc. to the Opposition of the Louisiana Public Service Commission to Application for Rehearing
5/17/02	Reply of Appellee, The Louisiana Public Service Commission, to Response of Entergry Louisiana, Inc.
5/22/02	Surresponse of Appellant, Entergy Louisiana, Inc. to the Reply of The Louisiana Public Service Commission
5/24/02	Order—Rehearing denied

ENTERGY

System Agreement

Agreement Among:
Arkansas Power & Light Company
Gulf States Utilities Company
Louisiana Power & Light Company
Mississippi Power & Light Company
New Orleans Public Service Inc.
Entergy Services, Inc.



* * * *

ARTICLE I

TERM OF AGREEMENT

1.01 This Agreement shall become effective on August 1, 1982, or such later date as may be fixed by any requisite regulatory approval or acceptance for filing and shall continue in full force and effect until terminated by mutual agreement of the Companies. Notwithstanding this, any Company may terminate its participation in this Agreement by ninety-six (96) months written notice to the other Companies hereto; and effective upon and after the date of implementation of retail open access in Texas, the Texas retail jurisdictional division (as defined in section 2.02) of Entergy Gulf States shall terminate its participation in this Agreement, except as to Service Schedule MSS-2 (Transmission Equalization), consistent with Section 2.02 below.

* * * *

1.03 This Agreement will be reviewed periodically by the Operating Committee to determine whether revisions are necessary to meet changing conditions. In the event that revisions are made by the parties hereto, and after requisite approval or acceptance for filing by the appropriate regulatory authorities, the Operating Committee will thereafter, for the purpose of ready reference to a single document, prepare for distribution to the Companies an amended document reflecting all changes in and additions to this Agreement with notations thereon of the date amended.

ARTICLE II

DEFINITIONS

For the purpose of this Agreement and of the Service schedules which are a part hereof, the following definitions shall apply:

* * * *

2.06 *Operating Committee* shall be the administrative organization created under this Agreement to administer its provisions.

2.07 *Generating Unit* shall be an electric generator, together with its prime mover and all auxiliary and appurtenant devices and equipment designed to be operated as a unit for the production of electric power and energy or as otherwise determined by the Operating Committee.

* * * *

2.14 *Capability* shall be the net output in megawatts that can be produced by a generating unit under conditions specified by the Operating Committee, or the input in megawatts available under contract from a supplying source, including any capacity determined in Sections 2.12 or 2.13 above, plus the contractual amount of firm purchases with reserves available during the month from other systems adjusted upward by the ratio of Seller's Capability and Seller's Load Responsibility as determined in Section 10.02C.

2.15 *System Capability* shall be the arithmetical sum in megawatts of the individual Company Capabilities.

2.16 *Company Load Responsibility* shall be determined as follows:

(a) The average of the sum of the Company's twelve monthly hourly loads coincident with the System's monthly peak hour load for the period ended with the current month measured in megawatts.

Each demand shall represent the simultaneous hourly input from all sources into the system of a Company, less the sum of the simultaneous hourly outputs to the systems of other interconnected utilities.

(b) Less the power supplied to others as sales for the joint account of all Companies.

2.17 *System Load Responsibility* shall be the arithmetical sum in megawatts of the individual Company Load Responsibilities.

2.18 *Responsibility Ratio* of a Company shall be the ratio obtained by dividing the load responsibility of that company by the System Load Responsibility.

2.19 *Capability Responsibility* of a Company shall be the System Capability multiplied by the Responsibility Ratio for that Company.

* * * *

ARTICLE III

OBJECTIVES

3.01 The purpose of this Agreement is to provide the contractual basis for the continued planning, construction, and operation of the electric generation, transmission and other facilities of the Companies in such a manner as to achieve economics consistent with the highest practicable reliability of service, subject to financial considerations, reasonable utilization of natural resources and minimization of the effect on the environment. This Agreement also provides a basis for equalizing among the Companies any imbalance of costs associated with the construction, ownership and operation of such facilities as are used for the mutual benefit of all the Companies.

* * * *

3.08 By jointly planning on a systemwide basis for the construction and operation of these major facilities:

(a) The combined loads of the Companies can be supplied with less aggregate installed capacity; and

(b) Installations of additional capacity can be made at lower cost per kW because of the large unit sizes; and

(c) The new installations will be more economical and require less operating labor and maintenance per kW because of the larger unit sizes; and

(d) The strengthened transmission system will make possible a fuller utilization of the capability of the lower cost generating units of the System; and

(e) Emrgency conditions in any part of the System or other systems in adjacent areas can be met with less probability of impairment of service to the general public.

3.09 It is intended that each Company shall be willing and able to provide its portion of the major facilities determined to be necessary and each Company shall share in the benefits and pay its share of the costs of coordinated operations as agreed upon in accordance with Service Schedules to be attached hereto from time to time and made a part hereof.

ARTICLE IV

OBLIGATIONS

4.01 *Production Facilities*

Each Company shall normally own, or have available to it under contract, such generating capability and other facilities as are necessary to supply all of the requirements of its own customers.

Each Company shall furnish the Operating Committee, at the time and in the manner designated, estimates of its annual peak load for the next succeeding 10-year period, or such period as may be required, together with estimates of its capability available from generating units in operation, under construction or already approved, capability available from

other sources under contract and Qualified Cogeneration Capacity or Qualified Small Power Production Capacity in accordance with Sections 2.12 and 2.13 of this Agreement.

The Operating Committee shall then determine a generation addition plan to provide capacity for the projected system load and furnish reliable service to customers at the lowest cost consistent with sound business practice. Any anticipated large blocks of power sales not previously submitted to the Operating Committee shall be submitted to the Operating Committee as soon as load information is available so that appropriate capacity can be scheduled into the generation addition plan.

Each Company that installs a Generating Unit will make the necessary financial arrangements and promptly proceed with the design and construction of the unit to meet the "in-service" date of the generation addition plan.

Any Capability in excess of the Capability Responsibility of a Company that may exist in the system of one or more Companies as a result of installation of facilities in accordance with the provisions of the generation addition plan shall be equalized among the Companies in accordance with the provisions of the applicable Service Schedule.

* * * *

4.08 *Dispatch*

Under general direction of the Operating Committee, Services will operate a centralized operations center properly equipped and staffed to dispatch the capacity and energy capability of the Companies, in the efficient, economical, and reliable manner as provided in this Agreement. All generating units, included in System Capability under this Agreement, presently in operation or installed in the future, shall be equipped with such controls as may be determined by the Operating Committee to be necessary to accomplish such centralized economic dispatch.

It is recognized by the Companies that, because of such economic dispatch, a Company may not, at all times, be supplying the energy requirements of its system, but may be taking energy from the resources of the other Companies or supplying energy to the other Companies. The payments or charges for such energy exchange shall be as provided in the applicable Service Schedule.

* * * *

4.12 *Service Schedules*

The basis of compensation for the use of facilities and for the capacity and energy provided or supplied by a Company to another Company or Companies under this Agreement shall be in accordance with arrangements agreed upon from time to time among the Companies. Such arrangements shall be in the form of Service Schedules, each of which, when signed by the parties hereto, and approved or accepted for filing by appropriate regulatory authority shall be attached to and become a part of this Agreement.

Each Company reserves the right to unilaterally seek amendments or changes in the terms and conditions of service and increases or decreases in the rates and charges provided in any of the Service Schedules from any regulatory body having or acquiring jurisdiction thereover.

* * * *

4.14 *Billings*

Bills for services rendered hereunder shall be calculated in accordance with applicable Service Schedules, and shall be issued on the fifth working day of the month following that in which such service was rendered and shall be payable on or before the 15th day of such month. After the 20th day, interest shall accrue on any balance due at the rate as determined in Section 35.19a(2)iii of the FERC Regulations, or at such other rate established by the Operating Committee.

* * * *

ARTICLE V

COMPOSITION AND DUTIES OF THE OPERATING COMMITTEE

5.01 *Operating Committee*

An Operating Committee shall be the administrative organization of this Agreement and shall consist of members designated by the chief executive officers of each Company and by the chief executive officer of the Parent Company. Such designation shall be by written notice to the Secretary of the Operating Committee with copies to each of the other Companies. The Companies and the Parent Company may change its designated members at any time by written notice to the Secretary of the Operating Committee and each of the other Companies.

5.02 *Officers of the Operating Committee*

The Operating Committee shall have the following officers with duties as designated:

(a) *Chairman*—The Chairman shall issue calls for and shall preside at meetings of the Operating Committee. He shall have responsibility for the general coordination of the Operating Committee functions among the various members.

(b) *Vice Chairman*—The Vice Chairman shall perform the duties of the Chairman in his absence or incapacity.

(c) *Secretary*—The Secretary shall be responsible for keeping the minutes of the meetings of the Operating Committee and for preparing copies thereof and for distributing them to the Companies. The Secretary shall be responsible for obtaining written approval from the Companies for any acts or decisions of the Operating Committee which may require such written approval, and shall be responsible for distributing copies of such approvals to the Companies.

The Chairman and Vice Chairman shall be elected from the members by majority vote at the first meeting held in each calendar year and shall take office immediately upon being elected.

The Secretary shall be designated by the Operating Committee.

5.03 *Meeting Dates*

The Operating Committee shall hold meetings at least quarterly and at any time upon the request of a member, and shall keep minutes of its proceedings.

5.04 *Decisions*

All decisions of the Operating Committee shall be by a majority vote. For the purposes of voting, the Parent Company shall have twenty (20) percent of the vote and the remaining eighty (80) percent shall be divided among the Companies in proportion to each Company's Responsibility Ratio in effect as of the preceding December 31st.

5.05 *Attendance at Meetings*

Each Company and the Parent Company shall be represented at each Operating Committee meeting by their members on the Committee or a proxy designated by the member or chief executive officer. Such proxy member need not be an employee of the Company represented.

5.06 *Duties*

The Operating Committee shall:

(a) Be responsible for the day-to-day administration of the Agreement and for the filing of this Agreement and any amendments thereto with the Federal Energy Regulatory Commission for approval or acceptance for filing and for distributing copies of such filings to the Companies.

(b) Make the studies required to fulfill the obligations agreed to in the Article IV of this Agreement, and its decisions shall become the basis for the installation of generation, bulk power transmission, communication, and other facilities necessary for the supply of capacity and energy to the System.

(c) Determine the amount of and require installation of adequate reserves of System Capability to assure, insofar as practicable, the continuous supply of capacity and energy to the major load centers of the System.

(d) Establish safe loading criteria for generating units, transmission lines and any other facilities necessary for the supply of power and energy to the major load centers of the System.

(e) Promulgate whatever standards may be required for the safe and reliable operation of the System.

(f) Consult with and provide general supervision for Services in employing and supervising a System Operator and provide for such assistance as needed.

(g) Determine the need for and generally supervise the keeping of records and the making of such reports as are deemed necessary or appropriate.

(h) Determine the need for and generally supervise communications, interchange and automatic generation control, metering, economic dispatch and relaying facilities necessary for the purpose of this Agreement.

(i) Make any determinations required for the purpose of administering any schedules subject to its administration.

(j) Study and determine from time to time additions or changes in facilities necessary to keep abreast of the production and transmission requirements of the System.

(k) Provide for and coordinate safe dispatching, switching and other routine procedures.

(l) Provide for proper distribution of spinning reserves and the supply of reactive kVa.

(m) Establish, amend, supplement or terminate from time to time rules, procedures or practices as necessary to insure functioning of the System within the scope of this Agreement.

(n) Coordinate negotiations with others from time to time for interchange and sale of power and energy.

(o) Coordinate arrangements for the sale and delivery to others on a profitable basis, of power and energy not required for System purposes.

(p) Coordinate arrangements from time to time to procure for the Companies, or for their account, such power and energy from external sources as may be required or will result in savings to the Companies.

(q) Keep abreast of all environmental factors as they affect the operation of the System in order to comply with all established criteria for minimizing pollution.

(r) Undertake any other duties that may from time to time be assigned to it or deemed appropriate.

5.07 *Employment of Consultants*

The Operating Committee, in the performance of its duties, may employ such technical and consulting services as warranted.

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* Typographical correction: "of" changed to "or"

5.08 *Expenses of Committee*

Each Company (except the Parent Company) shall pay the expenses of its representatives on the Operating Committee. The expenses of the representatives of the Parent Company shall be paid by Services. Any other expenses of the Committee shall be prorated among the Companies as determined by the Operating Committee.

* * * *

SERVICE SCHEDULE MSS-1

RESERVE EQUALIZATION

10.01 *Purpose*

The purpose of this Service Schedule is to provide the basis for equalizing the capability and ownership cost incidental to such capability among the Companies in such a manner that the capability and reserves of each Company after equalization shall be equal to its Capability Responsibility.

10.02 *Company Capability*

A Company's Capability shall be determined monthly and shall be the sum of available owned or leased generating units, purchases and seasonal or other energy exchange from demonstrated reliable sources as follows:

(a) The total capability of available generating units owned, operated under Operating Agreements for its own benefit, or leased by such Company, which units shall be included at their demonstrated net output measured in megawatts under conditions established by the Operating Committee. A unit is considered available to the extent the capability can be demonstrated and (1) is under the control of the System Operator, or (2) is down for maintenance or nuclear refueling, or (3) is in extended reserve shutdown (ERS)

with the intent of returning the unit to service at a future date in order to meet Entergy System requirements. The Operating Committee's decision to consider an ERS unit to be available to meet future System requirements shall be evidenced in the minutes of the Operating Committee and shall be based on consideration of current and future resource needs, the projected length of time the unit would be in ERS status, the projected cost of maintaining such unit, and the projected cost of returning the unit to service. A unit is considered unavailable if in the judgement of the Operating Committee it is of insufficient value in supplying system loads because of (1) obsolescence, (2) physical condition, (3) reliability, (4) operating cost, (5) start-up time required, or (6) lack of due-diligence in effecting repairs or nuclear refueling in the event of a scheduled or unscheduled outage.

The generating units of Gulf States that were in extended reserve shutdown on the date of the merger of Entergy and Gulf States, shall not be considered available for the purpose of determining Gulf States' Capability in the Service Schedule MSS-1 Reserve Equalization calculation until the units are brought into service.

If, as part of a settlement or judgment adverse to Gulf States in *Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Co.*, Civil Action No. 89-474-B (M.D. La.) and/or *Southwest Louisiana Electric Membership Corp. and Dixie Electric Membership Corp. v. Gulf States Utilities Co.*, Civil Action No. 92-2129 (W.D. La.), Gulf States acquires Cajun Electric Power Cooperative, Inc.'s 30 percent share of the River Bend Nuclear Generating Facility (River Bend) (or any portion thereof), then the net output in megawatts associated with such share shall not be considered available for the

purpose of determining Gulf States' Capability in the Service Schedule MSS-1 Reserve Equalization calculation.

(b) The contract quantity of capacity in maegwatts purchased without reserves by the Company.

(c) The contract quantity of firm capacity in megawatts purchased plus an additional amount as developed from the following formula:

$$A = \frac{FP \times SC}{(SL - FP)} - FP$$

where:

A = Amount, in megawatts (mW), to be added to contract quantity of firm capacity purchased.

FP = Amount of firm purchase in mW

SL = Seller's load responsibility in mW, determined by calculating the average of the Seller's monthly hour peak loads for the twelve month period ending with the current month. Each such peak load shall represent the simultaneous hourly input from all sources into the Seller's system, less the sum of the simultaneous hourly outputs to the systems of other interconnected utilities.

SC = Seller's total capability which shall be determined monthly and shall be the sum of the net demonstrated capabilities of Seller's owned or leased generating units and the contract quantity of capacity purchased by Seller, all measured in mW.

(d) That portion of the contract quantity of capacity in megawatts purchased with or without reserves, for the joint account of all the Companies as allocated to the Company on the basis of Section 4.02.

(e) That portion of the contract quantity of capacity in megawatts received under any seasonal or other exchange with outside suppliers for the joint account of all Companies, as allocated to the Company on the basis of its Responsibility Ratio.

(f) Cogeneration or Small Power Production Capacity in accordance with Sections 2.12 and 2.13. The Operating Committee shall have the authority to allocate any such capacity to one or more of the Companies in accordance with FERC Opinion Nos. 246 and 246-A.

10.03 *Basis of Reserve Equalization*

Company Capability in excess of the Capability Responsibility of any Company shall be allocated among the Companies so that the resultant capability and reserves of each Company shall be equal to its Capability Responsibility.

$$ER = CC - SC \times \frac{CLR}{SLR}$$

where:

ER = Equalized Reserve

CC = Company Capability (Section 2.14)

SC = System Capability (Section 2.15)

CLR = Company Load Responsibility (Section 2.16)

SLR = System Load Responsibility (Section 2.17)

If more than one Company has Company Capability in excess of its Capability Responsibility, the excess of each such Company from its Intermediate Generating Units, as defined in Section 2.09 shall be allocated to each deficient Company in the ratio of such Company's deficiency to the sum of the deficiencies of the deficient Companies.

10.04 *Reserve Equalization Payment*

For the reserve allocated in accordance with Section 10.03, the Company or Companies having an excess shall receive, from the Company or Companies having a deficiency, an equalization payment, determined in accordance with the method hereinafter described, for such reserve so allocated each month.

10.05 *Investment in Intermediate Generating Units*

The Investment in Intermediate Generating Units for each Party (based on Federal Energy Regulatory Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees) shall be limited to gas and oil fired units as follows:

(a) The cost includable for all such units in Accounts 310, 311, 312, 313, 314, 315 and 316.

(b) The cost of step-up transformers, circuit breakers, and switching equipment etc. included in Account 353 and required to connect all such units to the transmission system.

10.06 *Determination of Monthly Billing Charge*

The Monthly Charge (MC) per kW for billings under Reserve Equalization shall be determined for each Company based upon the previous year's operating results. The MC will be based on the average of all units included as Intermediate Generating Units as included in Sections 10.05 (a) and (b).

$$MC = (1/12)\ \frac{RB \times (CM + F) + D + PT + I + FT + OM}{C}$$

where:

CM = the weighted average cost of capital as determined in the following manner:

$CM = (DR \times i) + (PR \times p) + (ER \times c)$

C = The sum of capacity in kW for the generating units in RB

DR = Ratio of Debt Capital at Dec. 31 of the previous year

PR = Ratio of Preferred Stock at Dec. 31 of the previous year

ER = Ratio of Common Stock at Dec. 31 of the previous year

i = Average embedded cost of debt capital outstanding at Dec. 31 of the previous year

p = Average embedded cost of preferred stock outstanding at Dec. 31 of the previous year

c = Return on Common Equity at 11.0%

D = The amount of depreciation for the preceding year as reported on page 429 of the Company FERC Form No. 1 report as related to Intermediate Generating Units and associated equipment required to connect generating equipment to the transmission system.

F = Federal and State Income Taxes determined from the following formulae:

$$F = \frac{T}{(1 - T)} \times (CM - DR \times i)$$

where:

T = f + s - fs when federal tax is not deductible in computing state tax, and

$T = \frac{(f + s - 2fs)}{(1 - fs)}$ when federal tax is deductible in computing state tax, and

f = Federal Income Tax Rate

s = State Income Tax Rate

RB = The amount as of December 31, of the preceding year reflected in Plant Accounts 310, 311, 312, 313, 314, 315 and 316 for gas or oil fired Steam Production Plants, plus an amount included in Account 353 which represents the investment in step-up transformers, circuit breakers, and switching equipment, etc. required to connect all such units to the transmission system, less the accumulated provision for depreciation for the gas or oil fired units in the Steam Production plants and the accumulated provision for depreciation associated with the equipment included in Account 353 described above, and less the proportionate amount of Account 282 Accumulated Deferred Income Taxes.

I = Preceding year insurance premium for Intermediate Generating Units included in RB

PT = Ad Valorem taxes for the preceding year for Intermediate Generating Units Included in RB

FT = Applicable Corporation Franchise Tax for the preceding year for Intermediate Generating Units included in RB

OM = Operation and maintenance expenses plus the applicable general and administrative expenses. These combined expenses will be determined annually by taking the applicable accounts for each Company related to their owned generating capacity, together with the applicable general and administrative expenses, proportioned to the direct labor expenses.

Fossil Fueled Units

Direct—Accounts 500, 502, 503, 504, 505, 506, 507, 510, 511, 512, 513 and 514.

Allocable—Accounts 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931 and 932.

10.07 *Adjustment for Tax Changes*

The Reserve Equalization Payment as determined above shall be adjusted to reflect the imposition of any applicable new taxes not included in the above formula, or for any increase or decrease in taxes included as of the date of this Agreement.

10.08 *Billing Procedure*

The billing parameters will be in effect from June 1 to the succeeding May 31 based on the preceding year's results.

This Service Schedule MSS-1 shall be attached to and become a part of the Agreement dated the 23rd day of April, 1982 and shall be effective with said Agreement or at such later date as may be fixed by any requisite regulatory approval or acceptance for filing.

Attest

Original signed by
R.J. Estrada
Assistant Secretary

ARKANSAS POWER & LIGHT COMPANY

Original signed by
Jerry Maulden
President

Attest

Original signed by
W.H. Talbot
Secretary

LOUISIANA POWER & LIGHT COMPANY

Original signed by
J.M. Wyatt
President

Attest

MISSISSIPPI POWER & LIGHT COMPANY

Original signed by
R.J. Estrada
Assistant Secretary

Attest

Original signed by
William C. Nelson
Secretary

Original signed by
D. C. Lutken
President

NEW ORLEANS PUBLIC SERVICE INC.

Original signed by
James M. Cain
President

* * * *

SERVICE SCHEDULE MSS-3

EXCHANGE OF ELECTRIC ENERGY AMONG THE COMPANIES

30.01 *Purpose*

The purpose of this Service Schedule is to provide the method of pricing energy exchanged among the Companies.

* * * *

RE: LPSC Docket No. U-20925 (1996 and 1997 FRP proceedings)

Dear Counsel:

Pursuant to the conversations among Mike Fontham, Paul Zimmering, Randy Young, John Chavenne, and me, this letter agreement documents the following stipulation by the Louisiana Public Service Commission ("LPSC"), Entergy Louisiana, Inc. ("Entergy Louisiana" or "Company"), the Louisiana Energy Users Group ("LEUG"), and Marathon Oil Company ("Marathon") regarding the resolution of certain issues that have been addressed in Entergy Louisiana's first and second annual Formula Rate Plan proceedings (the "1996 FRP proceeding" and "1997 FRP proceeding," respectively):

1. *Authorized Rate of Return on Common Equity*. The authorized rate of return on common equity approved by the Commission in the 1996 FRP proceeding (10.5%) will be implemented through a prospective adjustment applied as provided in the Formula Rate Plan.

   Further, that same authorized rate of return on common equity will be used in the 1997 FRP proceeding, and as part of this settlement, the Company will not oppose the issuance of a credit, the effect of which would be to apply, effective July 1, 1997, that authorized rate of return on common equity in the calculation of the rate adjustments required by the Formula Rate Plan. The Company agrees to this with a full reservation of its rights in future Formula Rate Plan proceedings, and notwithstanding its position that such retroactive application is not appropriate pursuant to the Formula Rate Plan under the circumstances of this case.

Additionally, that same ROE will be the approved ROE for purposes of the 1998 FRP proceeding and will be reflected in the Company's 1998 FRP filing, if an FRP filing is made by the Company in 1998.

2. *Capital Structure (gross vs. net proceeds of debt).* In consideration of Company's agreement with respect to item 1 above, the Commission agrees that it will not rule on the capital structure issue in the 1996 FRP proceeding, agrees that the record developed in the 1996 FRP proceeding with respect to the capital structure issue will be merged with the record developed in the 1997 FRP proceeding with respect to that same issue, agrees that the testimony and evidence on this same issue developed in the 1997 proceeding will be completed in accordance with the current schedule for the 1997 proceeding, and agrees that the issue will be tried during the February 1998 hearing currently scheduled to commence on February 16, 1998. The Commission's decision on this issue in the 1997 FRP proceeding, based on the record of the hearing conducted in February 1998, will be effective prospectively only from the date of the Commission's order.

3. *Other issues in the 1996 FRP proceeding.* The Commission's decision as it relates to all other issues in the 1996 FRP proceeding will be applied prospectively following the issuance of an order by the Commission in calculating the amount of the resulting rate adjustment to be implemented pursuant to the 1996 FRP proceeding. The correction to the LIPS rate adjustment, however, will be applied retroactively effective July 1, 1996.

4. *MSS-1 Billings.* This stipulation does not address issues relating to MSS-1 billings to the Company under the System Agreement, and shall have no effect

upon the litigation or resolution of such issues in the 1997 FRP proceeding.

5. *Other issues in the 1997 FRP proceeding.* All other issues in the 1997 FRP proceeding will be settled as follows, and except as specifically provided herein below, will be implemented prospectively following the issuance of an order by the Commission approving the terms of this settlement.

   a. *Restructuring costs.* Restructuring costs accrued, but not expended, in the 1996 evaluation period (having a value of $1,553 million) will be removed from the Company's revenue requirement for purposes of adjusting rates pursuant to the Formula Rate Plan. This adjustment will be applied effective July 1, 1997.

   b. *SERI rate increase.* This issue will be resolved in accordance with the provisions of the Proposed SERI Refund Procedure, a copy of which is attached hereto and made a part hereof.

   c. *SFI Period Costs.* Issues relating to the Company's SFI Period Costs will have no effect on the rate adjustments implemented pursuant to the 1997 FRP proceeding.

   d. *Other issues.* No adjustment will be made with respect to any other issues raised in the 1997 FRP proceeding.

Please indicate your agreement with the stipulations set forth above by executing the jurat below, sending a copy to me via facsimile, and returning the signed original to me, retaining a copy for your records. I will distribute a copy of the executed letters to everyone.

The Company is performing the calculations to lower base rates by means of a rider and to provide the credits with

respect to those items that relate to dates past. Assuming that we receive everyone's agreement to this stipulation, we will have bill inserts printed and believe that we can be ready to implement the prospective reductions by late February, with credits appearing on customer bills approximately one month later.

Sincerely,
/s/ Wayne Anderson
J. Wayne Anderson

Agreed and Accepted:
By: /s/ Paul L. Zimmering
Representing: LPSC Staff

OUTLINE

SERI REFUND PROCEDURE FOR ELI

1. For purposes of the 1997 Rider FRP adjustments, any future Rider FRP filings, and any general rate reviews conducted prior to the issuance of a final FERC order in FERC Docket No. ER95-1042-000 ("SERI Case"), the level of Grand Gulf capacity costs reflected in ELI's base rates shall be the level defined by the FERC Administrative Law Judge's initial Decision issued in the SERI Case on July 11, 1996 ("Interim Grand Gulf Cost Level"). Entergy Louisiana shall defer amounts representing the difference between the interim Grand Gulf Cost Level and the level of Grand Gulf capacity costs actually billed to the Company by SERI pending implementation of a final decision by the FERC.

2. The Rider FRP Rate Adjustments shall be revised to reflect the interim Grand Gulf Cost Level on a prospective basis only, subject to refund or surcharge upon the implementation of a final decision by the FERC in the SERI case.

3. The Refund/Surcharge Period shall commence on July 1, 1997, the date on which the full amount of the Grand Gulf capacity costs were reflected in ELI's base rates subject to refund or surcharge pending the implementation of a final decision by the FERC in the SERI case, and shall continue until the date revised Rider FRP Rate Adjustments (or other rates) reflecting the final FERC decision in the SERI Case are implemented ("Final Rates").

ENTERGY SERVICES AND GULF STATE UTILITY COMPANY

Docket No. EL 94-13-000

INITIAL DECISION
(Issued March 3, 1995)

Jacob Leventhal, Presiding Administrative Law Judge

* * * *

Appendix

Offer Of Settlement EL94-13-000

Settlement Provisions

Section 10.02(a) of the System Agreement shall be clarified to explicitly state that a unit that is placed in ERS with the intent of returning the unit to service at a future date in order to meet Entergy System requirements may be considered available for purposes of calculating reserve equalization payments under MSS-1. The amendment is shown below in *bold type and underlined* and is set out in the context of section 10.02(a).The language shown in *italics* is proposed to be added (along with another provision) to this section of the System Agreement by a Compliance Filing submitted to the Commission on December 30, 1993, in the merger proceedings, Docket Nos. EC92-21-000 and ER92-806-000. Section 10.02(a) shall read as follows:

> The total capability of available generating units owned, operated under Operating Agreements for its own benefit, or leased by such Company, which units shall be included at their demonstrated net output measured in megawatts under conditions established by the Operating Committee. A unit is considered

> available to the extent the capability can be demonstrated and (1) is under the control of the System Operator, or (2) is down for maintenance or nuclear refueling, *or (3) is in extended reserve shutdown (ERS) with the intent of returning the unit to service at a future date in order to meet Entergy System requirements. The Operating Committee's decision to consider an ERS unit to be available to meet future System requirements shall be evidenced in the minutes of the Operating Committee and shall be based on consideration of current and future resource needs, the projected length of time the unit would be in ERS status, the projected cost of maintaining such unit, and the projected cost of returning the unit to service.* A unit, *including an* ERS unit, is considered unavailable if in the judgment of the Operating Committee it is of insufficient value in supplying system loads because of (1) obsolescence, (2) physical condition (3) reliability, (4) operating cost, (5) start-up time required, or (6) lack of due-diligence in effecting repairs or nuclear refueling in the event of a scheduled or unscheduled outage. *Notwithstanding the foregoing*, the generating units of Gulf States that were in extended reserve shutdown on the date of the merger of Entergy and Gulf States, shall not be considered available for the purpose of determining Gulf States' Capability in the Service Schedule MSS-1 Reserve Equalization calculation until the units are brought into service.

Minutes

Entergy Operating Committee
September 30, 1997
Attendance: 14

Entergy Arkansas, Inc.	1
** Jim Pilgrim	
Entergy Gulf States, Inc.	1
* Karen Johnson	
Entergy Louisiana, Inc	1
* John Cordaro	
Entergy Mississippi, Inc.	1
* Don Meiners	
Entergy New Orleans, Inc	1
* Dan Packer	
Entergy Services, Inc	9
* Frank Gallaher (Chairman)	
Jim Kenney	
Ken Turner	
Louis Buck	
Jim Rider	
Larry Ables	
Bill Aycock	
Bob Hawkins	
Bob Grenfell	

* Committee members
** Proxy for Drake Keith

MINUTES
ENTERGY OPERATING COMMITTEE
September 30, 1997

Mr. Gallaher convened the meeting at 9:00 a.m.

AGENDA

I.
II. '98 Capacity Plan
III. '98 Load & Capability
IV. Extended Reserve Shutdown Units
V.
VI. Next meeting

ITEM I—

ITEM II—'98 CAPACITY PLAN

Ken Turner briefed the Committee on the status of the '98 Capacity Plan. No recommendation was made regarding the '98 capacity plan since the analysis is not yet complete. (Appendix B)

ITEM III—'98 LOAD & CAPABILITY

Ken Turner presented the '98 Load & Capability Forecast to the committee for approval for planning purposes. (Appendix C)

Motion was made by John Cordaro, seconded by Don Meiners that the '98 Load & Capability Forecast be approved, as presented, for planning purposes. Motion passed.

ITEM IV—EXTENDED RESERVE SHUTDOWN UNITS

Ken Turner discussed the Federal Energy Regulatory Commission's ("FERC") recent order adopting the proposed amendment to Service Schedule MSS-1 intended to address the generating units currently in extended reserve shutdown

("ERS") and the treatment of those units under the System Agreement. The amendment provides, in relevant part, as follows:

> *A unit is considered available to the extent the capability can be demonstrated and (1) is under the control of the System Operator, or (2) is down for maintenance or nuclear refueling, or (3) is in extended reserve shutdown (ERS) with the intent of returning the unit to service at a future date in order to meet Entergy System requirements. The Operating Committee's decision to consider an ERS unit to be available to meet future system requirements shall be evidenced in the minutes of the Operating Committee and shall be based on consideration of current and future resource needs, the projected length of time the unit would be in ERS status, the projected cost of maintaining such unit, and the projected cost of returning the unit to service.*

Based on the information Mr. Turner discussed under agenda items II and III, a motion was made by Don Meiners and seconded by Karen Johnson that the units currently in ERS should continue to be deemed "available" for purposes of determining Company Capability, as that term is defined in Section 10.02 of the System Agreement. Motion passed.

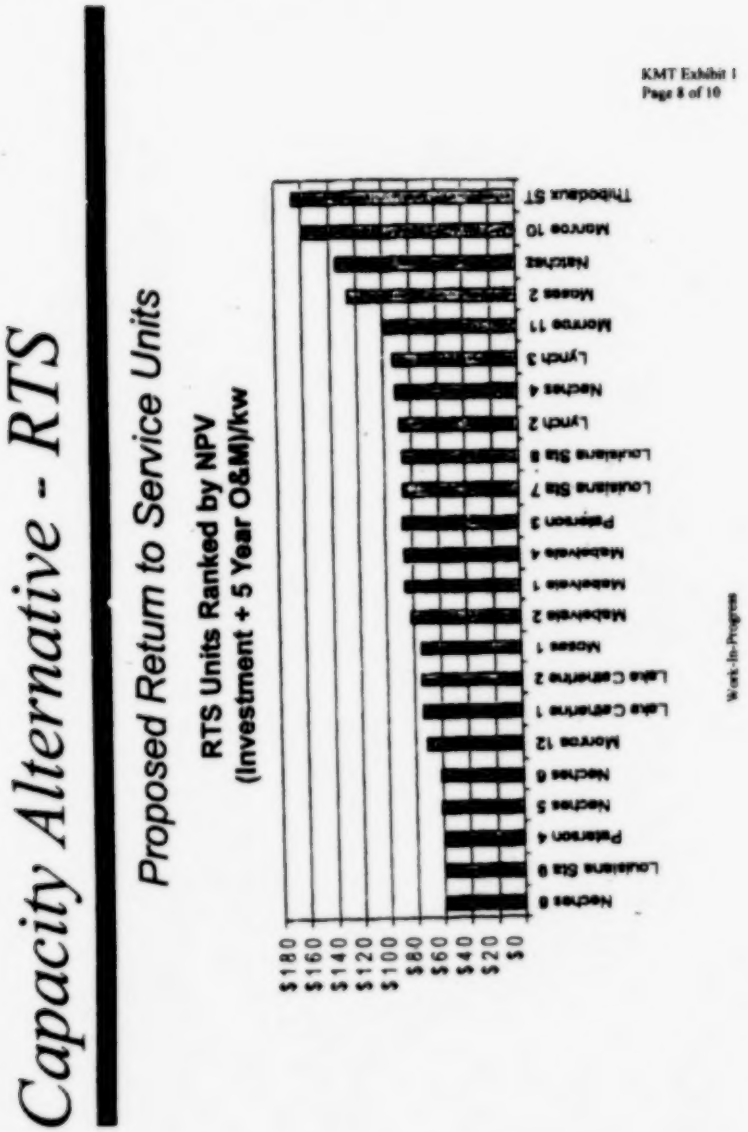
ITEM V

APPENDIX C ENERGY ELECTRIC SYSTEM 1995 LOAD & CAPABILITY FORECAST (MW)

DEMAND-SIDE REQUIREMENTS	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
1. Native Load Requirements	19,541	19,515	19,787	20,031	20,217	20,366	20,522	20,676	20,859	21,028
2. Demand-Side Resources	(1,249)	(1,140)	(1,144)	(1,147)	(1,144)	(1,108)	(1,041)	(907)	(908)	(909)
3. Firm Native Load (1+2)	18,292	18,375	18,643	18,884	19,073	19,258	19,481	19,769	19,951	20,119
4. Reserve Requirements	2,744	2,756	2,796	2,833	2,861	2,889	2,922	2,965	2,993	3,018
5. Stand-By Capacity Sales	146	174	175	177	201	231	248	276	298	321
6. Capacity Sales W/Op Reserves	220	220	220	160	160	160	160	160	160	160
7. Capacity Sales From Reserves	1,058	1,058	378	350	350	400	400	400	500	500
8. Requirements For Load (3+4+5+6+7)	22,460	22,583	22,212	22,404	22,645	22,938	23,211	23,570	23,901	24,118
SUPPLY-SIDE RESOURCES										
9. Generation Capability	22,730	22,743	22,664	22,678	22,678	22,678	22,678	22,678	22,678	22,678
10. Additions/Retirements/Rerates	13	(79)	14	0	0	0	0	0	0	0
11. Purchases w/o Reserves	492	491	491	491	491	490	533	890	990	990
12. Total Capabilities (9+10+11)	23,235	23,155	23,169	23,169	23,169	23,168	23,211	23,568	23,668	23,668
13. Extended Reserve Shutdown	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)	(1,284)
14. Operational Capability (12+13)	21,951	21,871	21,885	21,885	21,885	21,884	21,927	22,284	22,384	22,384
RESERVE MARGIN										
15. Resource Surplus/Deficit (12-8)	775	572	957	765	524	230	0	(2)	(233)	(450)
16. % Reserve Margin (100*(4+15)/3)	19.2%	18.1%	20.1%	19.1%	17.7%	16.2%	15.0%	15.0%	13.8%	12.8%
17. Operational Surplus\(Deficit) (14-8)	(509)	(712)	(327)	(519)	(760)	(1,054)	(1,284)	(1,286)	(1,517)	(1,734)

NOTES: Line 4. Reflects a 15% target reserve margin. Line 15. Any resource deficit will be supplied in accordance with the System's Integrated Resource Plan. Line 17. Operational deficits will be made up through short-term purchases, return-to-service of units on extended reserve shutdown, or other operational actions.

DATE: 09/26/97 Case No: L09117RO



FORMULA RATE PLAN 1997 ANNUAL FILING ENTERGY LOUISIANA, INC. (FORMERLY LOUISIANA POWER & LIGHT) EX PARTE IN RE: INVESTIGATION OF LOUISIANA POWER & LIGHT COMPANY'S RATES, CHARGES, SERVICES RENDERED AND OPERATIONS & (FORMULA RATE PLAN)

DOCKET NUMBER U-20925

(Hearing held February 16, 1998 before ALJ Carolyn DeVitis)

WITNESS

Matthew Kahal

* * * *

[70] but that's the route he chose to go.

MR. ANDERSON: Well, the other problem, You Honor, is that my copy had writing a over it, and I needed a clean copy. And, frankly, at the time that I made the request, I didn't realize that I was only addressing the authenticity problem, but it certainly would've been easier If I had known.

MR ZIMMERING: Okay. I have no objection to any of those four exhibits, Your Honor.

JUDGE DEVITIS: I am assuming, Mr. Anderson, that you will demonstrate that these items are, in fact, relevant to what we're discussing today?

MR. ANDERSON: Yes, Your Honor.

JUDGE DEVITIS: All right. Please proceed.

MR. ANDERSON: All right. Thank you, Your Honor.

CROSS-EXAMINATION BY MR ANDERSON:

MR ANDERSON: Good afternoon, Mr. Catlin.

MR. CATLIN: Good afternoon.

Q. I'm afraid I've eaten substantially into the 30 minutes I estimated for the time to cross-examine you, but I'll try to be brief. If I refer to the generating units of the Entergy system

that are in extended reserve shutdown as ERS units, can we agree that we're talking about the extended reserve shutdown units?

A. Certainly.

Q. Thank you. Are you familiar with a service schedule to the Entergy system agreement known as, Service Schedule MSS-1?

A. Yes.

[71] Q. Am I correct that billings under Service Schedule MSS-1 might be one number if the ERS units are included in the calculation and a different number if the ERS units are not included in the calculation?

A. Yes.

Q. Okay. Am I correct that the gravamen of the LPSC's complaint to the FERC, which is—has been marked for identification as ELI Exhibit 10, the gravamen of that complaint was that for purposes of calculating the MSS-1 billings, the ERS units should be excluded from the calculation?

A. Yes.

Q. Am I correct that in addition to asking the FERC to rule that the ERS units should be excluded, the Louisiana Public Service Commission also, in that case, requested the FERC to order that refunds be made to ELI so that the ELI ratepayers could be made whole?

A. I think that's generally correct.

Q. And, in fact, that allegation appears on page seven of the complaint in paragraphs numbers 16 and, certainly, the first sentence of paragraph 17, correct?

A. Yes.

Q. Would you read the first sentence of paragraph 17 for me—read it into the record.

A. "Only by ordering the full refund as a remedy can the ratepayers of LP&L and MP&L be made whole."

Q. Thank you. Now, am I correct, Mr. Catlin, that the MSS-1 billings to ELI represent the price that ELI pays for reserve equalization?

[72] A. It's certainly one of the prices, yes, One of the costs.

Q. Okay. It is a price that ELI pays for reserve equalization; would you agree with that?

A. Yes.

Q. Okay. Now, am I correct that Service Schedule MSS-1 is an FERC jurisdictional rate schedule?

A. Yes.

Q. Am I correct that currently the price that ELI pays pursuant to that FERC jurisdictional rate schedule gets included in ELI'S cost of service for retail ratemaking purposes?

A. Yes.

Q. Am I correct that the LPSC complaint, which is ELI Exhibit 10, asks the FERC to order refunds which would have had the effect of lowering the price that ELI paid pursuant to MSS-1 for the periods in question?

A. That would've been the effect, yes.

Q. Okay. Am I also correct that the FERC determined in Order—in Opinion Number 415, that it would not change the price that ELI paid pursuant to MSS-1 for the periods in question?

A. It—it, being the FERC, elected not to order refunds to remedy the tariff violation, that's correct,

Q. Okay. Thank you. And that means that the FERC chose not to change the price that ELI paid pursuant to MSS-1 for the period in question correct?

A. It dented not to change the amount that had been billed.

[73] Q. Okay. And the amount that was billed was the price that was being paid by ELI, right?

A. I would say it was the cost, not the price. When I think of price, I think of a unit—a cost per unit, and I think of when you apply a price to a number of units to get a cost. I would say that it was the cost, not the price.

Q. Okay. If—assume for the sake of my question that the

calculation for MSS-1 for the month of January 1996 was $1 million. Are you with me?
A. Yes.
Q. Thank you. Was that the price that ELI paid that month in connection with the reserve equalization calculation under MSS-1?
A. I would say it was the cost or the amount that it was billed. You've identified that as being $1 million. I would refer to that as a cost.
Q. And not a price?
A. Yes.
Q. In the context of the question, what's the difference between cost and price?
A. Well, I think—as I explained before, I think price—I think of price as a per unit cost, and I think of cost as being the bottom line number of dollars that must be paid when you apply that price to the number of units. I would not use price in this context simply because I don't think it's a price. I think it's a cost, but if you want to define price some different way, I guess you could do that.
Q. Well, let me ask it this way: Would the $1 million in my hypothetical example that ELI paid in January of 1996 be the tariffed rate that ELI was required to pay?
A. The tariff defines the amount that it's paid as an equalization payment based on [74] the various capabilities and load responsibilities of the companies.
Q. And the amount that's paid pursuant to that tariff changes monthly usually; does it not?
A. I haven't looked at whether it's usual that it changes or not. I know that it changes from time to time as the various factors that affect the billings change.
Q. Okay. And the amount that ELI is required to pay pursuant to that tariff, MSS-1, in your lexicon is called what? What would you define that amount as?
A. As the monthly charge or the equalization payment.
Q. Okay. Let's call it the monthly charge. If I refer to that as

the MSS-1 monthly charge, we'll be talking about the same thing, correct? The amount that ELI has to pay in a given month pursuant to the tariff?
A. Sure, we can define it that way.
Q. Okay. Just for the sake of this cross-examination. Is that all right?
A. Sure.
Q. Monthly charge, fair enough?
A. Okay.
Q. The LPSC complaint sought refunds in order that the amount of the monthly charge for prior periods would go down, right?
A. Yes.
Q. And the FERC decided in Opinion Number 415 that it would not amend the amount of the monthly charge for prior periods, right?
A. That's generally correct, yes.
Q. And your testimony proposes that the amount of the monthly charge for prior [75] periods be treated as if they went down, right?
A. Yes.
Q. So, your proposal is that the Louisiana Commission, in setting rates, use a monthly charge other than the charge the FERC has approved for the periods that included January through December of 1996, right?
A. Yes.
Q. You also allege in your testimony, specifically referring to your surrebuttal testimony of January 1988 (SIC) at page four, lines 6 through 8, that there has been no demonstration why the Louisiana ratepayers should pay a monthly charge that includes the amounts actually charged to ELI during 1996, right?
A. Well, what it says is that, recognizing that there was a violation of the tariff, there has been no demonstration why Louisiana ratepayers should pay the excess charges associated with those violations.

Q. Okay. And those excess charges include amounts that were in the monthly charge for the months January through December of 1996, right?
A. Yes.
Q. That's what you mean by excess?
A. Amounts that wouldn't have been there had the—what I'm referring to by excess means amounts that would not have been there had there not been a tariff violation.
Q. And when the FERC looked at this issue, it concluded that the full amount of the monthly charge was appropriate and should be included in the monthly charge to ELI, correct?
[76] A. Well, what FERC concluded was that it wasn't going to order refunds. I'm not sure if your interpretation of exactly what FERC meant when it decided not to order refunds is complete or not, but it did decide that it would not order refunds and change the amount that had been charged to, during this time period, LP&L.
Q. Do you know if the FERC concluded that the amount of the monthly charge that had actually been imposed produced an end result that was reasonable, just and not unduly discriminatory?
A. If you're referencing the—I don't recall the exact words of the order. If you're referencing a particular page of the Opinion 415 or 415-A, the two orders that you put into the record, I could refer to if, but—
Q. I was just asking you if you recalled.
A. I don't recall the specific words, no.
Q. Are you familiar with the concept or term sometimes used in ratemaking called, "trapping of costs"?
A. I've heard it used.
Q. What is your understanding of that term?
A. I think it generally refers to when costs are billed to a utility, but not allowed to be recovered.
Q. I'm going to ask you to picture in your mind's eye a—no, let me not do that. Your Honor, may I approach this board over here?

JUDGE DEVITIS: Yes.
MR ANDERSON: I'll try to speak loud. Am I being picked up? I'm mechanically impaired, I'm sorry to say, Mr. Catlin. I would like you to picture in [77] your mind's eye, for the sake of my question, a pool of costs that I'll represent by this circle, and I want you to assume that these costs are divided by the FERC among four companies, four operating companies like that (INDICATING.) Are you with me?
MR. CATLIN: Yes.
Q. And I'll label these costs and the companies to which they're associated as one, two, three and four, for the four segments. Are you with me?
A. Yes.
Q. I don't know how loud I have to speak. Okay. Now, assume for me that the FERC divides this pool of costs in exactly the fashion shown on this demonstrative, okay?
A. Okay.
Q. And assume that the retail regulators also get a chance to decide how the costs are divided, and one or more them decide that—well, for example, the retail regulator for company one decides that it should only get this amount of cost as shown by the piece of the pie from the horizontal—no, the vertical line, thank you, over to the dashed line. Are you with me?
A. Yes.
Q. And if you assume that retail regulators two, three and four decide respectively for their operating companies that the FERC's division of cost is correct. This portion in here that I'm marking with the poche'd line would be trapped within the meaning of the term "trapped costs," correct?
A. Yes.
[78] Q. Now, when the Louisiana Commission went to the FERC with its complaint regarding the ERS units, there was a division of costs, and I want you just to assume for the sake of my question that the division is represented by one, two,

three and four even though the division of costs may not have been equal as among the four companies, okay?

A. Okay.

Q. When the Louisiana Commission filed its complaint and sought refunds, am I correct that if company number one was ELI and company number two was EMI, the Louisiana Commission and the Mississippi Commission alleged that they paid too much or did not receive enough and that the other companies, Entergy Arkansas and Entergy New Orleans, were the beneficiaries of the fact that companies one and two either paid too much or did not receive enough; is that correct?

A. Yes.

Q. And the Louisiana Commission proposed, did it not, that money would flow from the beneficiaries to the companies that had been deprived or that had been charged too much or not paid enough so that the pie would be divided equally or correctly; is that correct?

A. Yes.

Q. And so the Louisiana Commission proposed at the FERC a fix, a remedy, a solution, if you will, that did not trap any costs; isn't that correct?

A. Yes, I believe that's correct.

Q. Okay. Now, the FERC chose to not order any refunds to flow in connection [79] with the Louisiana Commission's complaint; is that correct?

A. That's correct.

Q. And you are proposing in this case that the Louisiana Commission set ELI's retail rates as if refunds had flowed; is that correct?

A. Yes.

Q. And that would have the effect of reducing the costs represented by MSS-1 and reflected in ELI'S retail rates; is that correct?

A. That's correct.

Q. Now, does the Louisiana Commission have the authority

to command the other operating companies to contribute to this solution?

MR. ZIMMERING: I'll have to object on the basis that calls for a legal conclusion as to whether the Louisiana Commission has that authority.

MR. ANDERSON: Fair enough, Your Honor. I apologize.

JUDGE DEVITIS: I would sustain that.

MR. ANDERSON: Let me re-ask the question. Do you have any understanding, Mr. Catlin, as to whether the Louisiana Commission can order the other operating companies to contribute to this solution in the same fashion in which the FERC had the authority to do so?

MR. CATLIN: I think that that's a legal issue. I would generally not think that they would, but—

Q. Assume for the sake of my question that the Louisiana Commission was without the authority to command operating companies in other states to contribute to this solution at the retail level in Louisiana, okay? Are you with me?

[80] A. Yes.

Q. In that event, this segment of cost that represented the difference between the amount that the FERC had approved in Order Opinion Number 415 and the lower level of costs that you've proposed in this case, that difference would be trapped, would it not?

A. Yes.

MR ANDERSON: Your Honor, in order that the record is clear in this, I would like to make an 8½ by 11 inch representation of these two demonstratives and mark them for identification as ELI Exhibit Number 12 being the one on which I've drawn the arrows and identified the operating companies. And ELI Exhibit Number 13 as the one with the poche'd area and ask that they be received into evidence so that the record, with respect to the witness' answers, will be complete.

MR. ZIMMERING: For purposes of demonstrative exhibits solely, I have no objection.

MR. ANDERSON: Yes, and it's understood, Your Honor. It's only offered as a demonstrative. We don't offer it for any other reason.

MR. ZIMMERING: Okay.

JUDGE DEVITIS: Okay. We'll accept into the record then as demonstrative exhibits, Exhibit 13 which is the circular drawing of four operating companies with the arrows and ELI Number 13, the circular drawing with the pie shaped slice shaded.

MR. ANDERSON: Okay. Your Honor, I may have misheard, but I think you referred to 13 twice. And I may have just misheard, but is it my understanding that

* * * *

[84] should be ordered." Do you see that sentence?
A. Yes.
Q. Am I correct that in that sentence the Louisiana Public Service Commission is alleging at the time that it filed this pleading on September 3, 1997, that refunds should be made, not just beginning in '87 and extending through '93, but beginning in '87 and extending right up until the time refunds are actually made, which would be sometime after September 3, 1997, including refunds for the 1996 period?
A. That's what this indicates.

* * * *

FORMULA RATE PLAN 1997 ANNUAL FILING
ENTERGY LOUISIANA, INC. (FORMERLY LOUISIANA POWER & LIGHT) EX PARTE. IN RE: INVESTIGATION OF LOUISIANA POWER & LIGHT COMPANY'S RATES, CHARGES, SERVICES RENDERED AND OPERATIONS. (FORMULA RATE PLAN)

DOCKET NUMBER U-20925

(Hearing held February 16, 1998 before
ALJ Carolyn DeVitis)

WITNESS

Kenneth Turner

* * * *

[85] MR ZIMMERING: Your Honor, could we take about a two minute break to see if we could talk the company into whether they might consider altering their order of witness and, if they won't, that'll be okay too.

MR. ANDERSON: Sure

JUDGE DEVITIS: We'll take a short break.

(OFF RECORD)

(BACK ON THE RECORD)

JUDGE DEVITIS: We'll go back on the record then.

MR. KENNETH TURNER came forth as a witness and, after having been duly sworn, testified as follows:

JUDGE DEVITIS: Mr. Anderson.

DIRECT EXAMINATION BY MR ANDERSON:

MR ANDERSON: Thank you. Please state your full name and business address for the record.

MR KENNETH TURNER: Kenneth M. Turner, 10055 Grogan's Mill Road, The Woodland's, Texas 77380.

Q. Are you the same Kenneth Turner who filed rebuttal testimony on behalf of Entergy Louisiana in these proceedings under date of December 30, 1997?

A. Yes.

Q. Have you any corrections or alterations to that testimony at this time?

A. No.

Q. Were there rebuttal exhibits that accompanied your rebuttal testimony?

A. Yes.

[86] Q. Am I correct that included among the rebuttal exhibits is information that is deemed by the company to be highly sensitive?

A. Yes

Q. With highly sensitive within the meaning of the confidentiality agreement executed by the Commission staff, the LEUG and the Company in this proceeding?

A. That's correct.

MR. ANDERSON: Your Honor, in connection with the witness' testimony, I would like to mark for identification the rebuttal testimony of Mr. Turner dated—the rebuttal testimony dated December 30, 1997 of Mr. Turner. That testimony is accompanied by exhibits and, particularly, KMT Exhibit 1, page 8 of 10, is highly sensitive. I don't quite how you would like to address this problem, but I would like to mark the testimony and exhibits as ELI Exhibit 14 and ask that it be received into evidence with at least page 8 of 10 received under seal.

MR. ZIMMERING: Your Honor, I understand—whether I agree or not, I understand that the company believes that some of this information is confidential. As long as you can be privy to it and use it for purposes of making your decision and the Commission can do that as well, sealing a portion of the record when we get to examination of the witness on that exhibit is fine.

MR. ANDERSON: And that's fine with us, Your Honor. We don't mean to imply that you don't have full access to it. We would respectfully request that if, in writing your recommendation, you could avoid putting the precise number down, that might be very helpful to us and would obviate the problem. But I merely wanted to raise, as a matter, that the company is concerned about such [87] data, because we are lurching in fits and starts toward a competitive environment and it may be that these data would be commercially sensitive data. But we certainly don't mean that you don't get to look at them and crunch the numbers and do whatever you want.

JUDGE DEVITIS: Okay. So, I believe then what would be proper would be for you to file a redacted version that would be part of the public record and that the rest of it would be filed under seal.

MR. ANDERSON: We'll do that, Your Honor.

JUDGE DEVITIS: I can't really give any final assurances about what I might need to say, but if you would be careful to include in your post-hearing memo your reasons for keeping—

MR. ANDERSON: We'll do that, Your Honor.

JUDGE DEVITIS: —the information private, I would appreciate that.

MR. ANDERSON: Your Honor, I have—low and behold, I've redacted a copy and I can mark it right now for identification as ELI Exhibit 14 and tender it to the court reporter so that I will have at least fulfilled that part of my obligation and then we'll submit a whole copy appropriately marked, under seal, this afternoon or tomorrow morning.

JUDGE DEVITIS: All right.

MR. ANDERSON: And, with that, we make the offer and—that is, we offer it into evidence, and I will tender the witness.

JUDGE DEVITIS: Mr. Zimmering, have you any objections to the redacted version being accepted as ELI Number 14?

[88] MR. ZIMMERING: No, and I was particularly impressed with the procedure used to redact that version of the testimony.

MR. ANDERSON: Listen, don't try this at home, Your Honor. I'm a professional.

JUDGE DEVITIS: Okay. So, we'll accept into the record as ELI Number 14 the redacted version of Mr. Turner' s rebuttal testimony, and I believe the witness has been tendered. Mr. Zimmering.

MR. ZIMMERING: Thank you very much, Your Honor.

CROSS-EXAMINATION BY MR ZIMMERING

MR. ZIMMERING: Well, my notes say, good morning, Mr. Turner. Good afternoon, Mr. Turner. How are you today?

MR. TURNER: Just fine.

Q. As you know, my name is Paul Zimmering. I'm with the Stone, Pigman law firm, and we're special counsel to the Commission in this matter, and I have several questions regarding the extended reserve shutdown units. We'll sometimes refer to them as ERS units. That'll be okay?

A. Yes.

Q. Okay. Now, is it a fair statement that it's the purpose of your testimony to support Entergy's inclusion of the ERS units in its calculation of charges to the operating companies pursuant to Schedule MSS-1?

A. Yes.

Q. To the extent that a company is able to include its ERS units in the computation of MSS-1 payments, it will be either longer or less short than it [89] otherwise would have been, is that a fair statement?

A. That's correct.

Q. Okay. And companies—just for the purpose of the record, is it a fair statement that, for purposes of the calculations

under MSS-1, companies that are long have more reserves than the system average and, therefore, would be the recipients of MSS-1 payments and companies that are short have less reserves than the system average and, therefore, would be payors to the other companies?

A. Long or short, then—you have to also include the load responsibility. You can't just say how much capacity they have. It's a collection of the load.

Q. Okay. It's a function of their load and—let me put it this way. It's a function of their load and their capability as compared to what the system's load and capability are as a whole?

A. That's correct.

Q. Okay. The longer a company is, the more payments it receives. The shorter a company is, the more payments it makes.

A. That's correct.

Q. Now, you're the secretary of the Entergy Operating Committee; is that correct?

A. Yes.

Q. Tell me what the Entergy Operating Committee is.

A. The Entergy Operating Committee is made up of representatives from each one of the legal entities: Entergy Arkansas, Entergy Louisiana, Entergy Mississippi, Entergy New Orleans and Entergy Gulf States, as well as an Entergy [90] representative. And they are the body—that body is the administrator of the system agreement under the terms of the system agreement.

Q. You're the secretary of that committee?

A. Yes.

Q. And have been for approximately how long?

A. Since late '96.

Q. As such, you're generally familiar with the units that are in extended reserve shutdown today?

A. Yes.

Q. Would you agree that currently system wide, Entergy has some 23rd—excuse me, 23 units in extended reserve shutdown totalling approximately 1,284 megawatts?
A. That's correct.
Q. Would you accept, subject to check, that Entergy Arkansas has approximately 506 megawatts in extended reserve shutdown, or maybe you can tell me.
A. Approximately 500, roughly.
Q. Okay. And approximately how much does ELI have in extended reserve shutdown?
A. 150.
Q. Okay.
A. I want to be sure, because I'm just scanning this list.
Q. Okay. I had 157, so I think we're in the same ball park. Would you agree with me that if all units currently in extended reserve shutdown were removed [91] from the calculation of MSS-1, that the charges to ELI under the system agreement would be lower than they are today under MSS-1?
A. Keep in mind that not all of the ERS units that are included in the 1,284 are included in MSS-1 today.
Q. Because of the Gulf States units?
A. Because of the Gulf States—that's correct.
Q. Okay. Taking—just so the record is clear, pursuant to certain provisions of the merger between Entergy—the Entergy Corporation and Gulf States, Gulf States ERS units were not used in this calculation?
A. That's correct.
Q. Okay. For the other four, let's call them the old middle south or Entergy operating companies, would you agree with me that if all units currently in extended reserve shutdown were removed from the calculation of MSS-1 payments, that the charges to ELI, under the system agreement, would be lower than they are today?
A. Yes.
Q. Let's talk for a minute what it means for a unit to be in extended reserve shutdown. First, units in extended reserve

shutdown are not currently operational; is that a fair statement?
A. That's correct.
Q. That is, they don't produce electricity, correct?
A. Not today.
Q. Not today. They don't currently produce electricity, correct?
[92] A. That's correct.
Q. And these units cannot be brought on line in a matter of minutes or hours or days or even weeks to serve load; is that a fair statement?
A. Depends on how many weeks you want to—
Q. Oh, less than four.
A. That's correct.
Q. Okay. Fuel is not procured for these units on a current basis; is that correct?
A. That's correct.
Q. These units do not have operational staffing currently; is that correct?
A. That's correct.
Q. Off system energy sales cannot currently be made from these units; is that correct?
A. They're not running, so no energy is being produced.
Q. Is—are the Entergy companies dispatched on some centralized basis?
A. Yes.
Q. How does that work? Would you explain that for the record?
A. The total system requirements are met with a combination of owned generation plus purchases. And when I say, requirements, that's the load of the entire system plus any sales we may have to be making. The dispatch center in The Woodlands commits units and dispatches those units to meet those requirement without regard what individual operating company owns that particular generation. It's trying to meet the total system requirements. Once a set of units are com-

mitted, then the computer system—actually the computer system is located in Pine Bluff, [93] Arkansas, but the dispatchers are located in The Woodlands, Texas. The computer system decides on a minute by minute basis, second by second basis, what units need to move in order to respond to the changing load requirement.

Q. In general, without regard to reliability issues, is it a fair statement that units are dispatched in inverse order of cost? The cheapest units are dispatched first.

A. Once you have a certain set of units committed—I mean, there are certain, as you mentioned, reliability concerns where you have to have units on line to meet voltage concerns, et cetera. But, in general, that's correct.

Q. Okay.

A. The next increment will come from the next cheapest source to generate.

Q. The system operator who dispatches these generating units and the purchased power to serve Entergy's system load cannot rely on the units in extended reserve shutdown when it's making his choice as to which units to dispatch, correct?

A. That's correct.

Q. Now, some of the units that are in extended reserve shutdown have been used as a source for parts needed by other generating units which are, in fact, operational; is that correct?

A. I've been told that by plant operations, yes.

Q. Okay. Did you look at the data requests that were propounded to the company regarding these ERS units?

A. I looked at some, yes.

Q. Okay. You're aware that we asked the question, "Please state whether any of the ERS units have been utilized as a source of parts for other operating units," [94] correct?

A. Yes.

Q. And you saw that question?

A. Yes.

Q. Okay. And did you see the answer?

A. No.

Q. Okay. If I might, Your Honor, mark this as Commission Staff Number 5. I believe all we've put in is our testimony so far. Mr. Catlin, having missed his plane, is going to give me a hand here. For the record, this document is entitled, "Entergy Louisiana, Inc., Louisiana Public Service Commission Docket Number 20925 (FRP) Response of Entergy Louisiana, Inc. To LPSC data request 4-11." And that data request reads, "Please state whether any of the ERS units have been utilized as a source of parts for other operating units. If so, please provide complete details." Does the statement on this page that seven of the ERS units have been used as a source of parts for other operating units comport with your understanding?

MR. ANDERSON: Objection, Your Honor. I'd like to object to this question and this line in terms of relevance.

MR. ZIMMERING: And what specifically? I'm sorry. I didn't hear you Wayne.

MR. ANDERSON: I would like to object to this question and this line of questioning in terms of relevance.

MR. ZIMMERING: Well, Mr. Catlin testified that the company may not have [95] complied with the provisions of the Federal Energy Regulatory order as to when these units can be included, in fact, as ERS units and there are a series of criteria set forth in that order and—excuse me, in the revised service schedule 10.02 and whether or not these units can, in fact, be relied upon will make a difference—we believe makes a difference as to whether they satisfy those criteria.

MR. ANDERSON: Your Honor, I don't know if you've looked at the criteria listed in service schedule MSS-1 at section 10.02, but whether or not parts have been removed from an ERS unit is not a criterion that is listed in that service schedule. And, in fact, whether a part has been removed from

an ERS unit is completely irrelevant to the criteria listed in service schedule MSS-1. And so I reiterate my objection that this line of cross-examination and this question is irrelevant.

MR. ZIMMERING: Your Honor, just so the criteria are on the table. I find that an incredible statement, Mr. Anderson.

MR. ANDERSON: Thank you.

MR. ZIMMERING: The criteria that—the operating committee's decision to consider an ERU—ERS unit available to meet future system requirements shall be evidenced in the minutes based on consideration of current and future resource needs, the projected length of time the unit would be in ERS status, the projected cost of maintaining such unit and the projected cost of returning the unit to service. If these units have been cannibalized, as the company agrees they had, it certainly makes a difference or it certainly is a factor to be considered when projecting the cost of returning the units to service.

[96] MR. ANDERSON: May I respond, Your Honor.

JUDGE DEVITIS: Yes.

MR. ANDERSON: The criterion—the criteria that Mr. Zimmering read did not include whether parts had been removed from the ERS units. If Mr. Zimmering wants to plumb the reasonableness or plumb whether the company believes that it met the criteria set out by the FERC, that's one thing. But the question of whether parts have been removed from ERS units is not one of the things that he just read to you. It's not one of the criteria and that's the point of my objection.

JUDGE DEVITIS: I'm going to allow the testimony. While it doesn't specifically say from the part you read about removing parts, I think whether or not the unit—parts of the unit are there would influence whether it could be put into use or not. Please proceed.

MR. ZIMMERING: Thank you, Your Honor. Does this comport with your understanding that seven of the 23 units have been utilized as parts or other operating units on the system?

MR. TURNER: Yes.

MR. ZIMMERING: Okay. Your Honor, we would offer into evidence Commission Staff Exhibit Number 5.

MR. ANDERSON: We object on the grounds of relevance, Your Honor.

JUDGE DEVITIS: Having already ruled that the testimony is relevant, we'll accept into the record LPSC Number 5, the data request, response to the fourth set of data request number 11.

MR. ZIMMERING: Thank you, Your Honor. Is it a fair statement that it might [97] take 12 months or more, depending on the unit, to bring some of these generating units back on line from the time the decision is made to bring them on line?

MR. TURNER: I've been told by plant ops that they need six to eight months to bring a portfolio of these units back into service. I believe you asked me in my deposition what if we bring the entire fleet, all 23 units, back and that's when I gave you the 12 to 18 months answer.

Q. Okay. So, if the whole compliment were brought back, it could take as long as 18 months until the last of the units were brought back on line?

MR. ANDERSON: Objection, Your Honor. Does he mean by the question, if the whole compliment were brought back at the same time?

JUDGE DEVITIS: Yes, please clarify your question.

MR. ZIMMERING: I'm sorry, Your Honor. What did you mean in the answer you just gave me?

MR. TURNER: If all—if the entire fleet of ERS units were brought back at the same time, the entire fleet, all 23, it could take as long as 12 to 18 months to affect at least some portion of that.

Q. Units that are in extended reserve shutdown are inactive—they're nonoperational, correct? Today.
A. Today, that's correct.
Q. Do you agree that one reason that Entergy places units in extended reserve shutdown is because they are the least economic to run of all of the units on the system?
A. That would've been a reason why they were not running at the time that they [98] were put into service. That was just one factor that was considered and it was determined that we could save even more money by just not having then run at all.
Q. Okay. Let me go back. I think you said, when they were put into service. Did you mean to say, when they where first put into extended reserve shutdown?
A. That's what I meant. Yes sir.
Q. Okay. Some of the units that were placed in extended reserve shutdown were in poor physical condition; is that a fair statement?
A. Yes.
Q. Now, in September of this year, the Entergy Operating Committee met—excuse me. In September of 1997, the Entergy Operating Committee met and declared that each and every one of the 23 Entergy units in extended reserve shutdown will be available to meet future system requirements; is that a true statement?
A. What the Committee—I made the presentation to the Committee and what I've read out of Section 10.02 of the Committee, the four factors that have to be considered, and,

based on those factors, they agreed that, yes, these units should be included in MSS-1 purposes.
Q. Are the—did the Operating Committee meet and declare that each and every one of the 23 units in extended reserve shutdown will be available to meet future system requirement?
A. They looked at the criteria in Section 10.02. The question that was put in front of then, should these units in ERS continue to be counted for MSS-1 purposes. And, again, I need to qualify that as to the non-GSU ERS units.
[99] Q. Right.
A. That was the question that was put in front of them. They decided that, based on our current and future resource needs, the projected length of time the unit would be in ERS status, projected cost of maintaining the unit and the projected cost of returning the unit to service, that they should be declared available for MSS-1 purposes.
Q. Let's turn to Exhibit 1, page 8 of 10. Now, Mr. Anderson, as I understand it, the names of the units in extended reserve shutdown are not—the company doesn't consider those sensitive or highly confidential.

MR. ANDERSON: No. That's a correct understanding.

MR. ZIMMERING: Good. Okay. Let's take a look at the units in extended reserve shutdown as they appear on KMT Exhibit 1, page 8 of 10, okay?

MR. TURNER: Yes.

Q. Now, one of the criteria that you indicated that the Operating Committee looked at in making the decision that these ERS units should be included for purposes of MSS-1, because the criteria in 10.02 were satisfied was, the projected length of time the unit would be in ERS status, correct?
A. That's correct.
Q. Okay. Now, let's take a look at page 8 of 10, KMT Exhibit 1. First of all, we're all in agreement, aren't we, that

none of these units here has been out of ERS status, for example, in 1997 or 1996?
A. That's correct.
Q. Okay. None of them are coining out in 1998, correct?
[100] A. That' s correct.
Q. When will Neches-6, the very first one on the left-hand side come out of ERS?
A. I believe that's Neches-8.
Q. Oh, I'm sorry. I've got a bad copy here. Let's call it Neches-8. When will it come out of ERS?
A. I can't give you a definitive date when any of these units on this page will come out of —all I can say is, that we have resource needs; we look at those needs each summer; actually, each fall, in preparation for the following summer and, based on what the most economical choice to make is, we will decide whether or not we will bring these units back.
Q. Okay. So, you can't give me a day, a week, a month or even a year for any of these 24 units?
A. I can't, and I don't think it would be prudent to do so, because it gives us flexibility to wait until it's closer to the time of the need. And, if there's a cheaper alternative, it's better for the ratepayers to take that cheaper alternative rather than set a date certain to bring Neches-8 back in service.
Q. Okay. You state in your testimony—let's turn over to your testimony on page 5, line 10. You state that "In our view . . ."—I take that that's either the view of Entergy or the view of the Operating Committee?
A. I believe what I'm discussing here is the presentation I made to the Operating Committee, and I believe in our view—what I intended that to mean is from my position as Director of Resource Planning.
Q. Okay. You say the ERS units would be needed in the relative near term, [101] correct?
A. That's correct.
Q. And by "relative near term" that means to you any time within the next 10 years, right?

A. Yes.
Q. So, there's no sheet, for example, that's comparable to KMT-8—excuse me, KMT-1, page 8 of 10, that the Operating Committee adopted that's got like a month and a year next to every operating unit—excuse me, next to every unit in ERS indicating when it's going to come out?
A. That's correct.
Q. Is it your understanding that many of the generating units in extended reserve shutdown have been there for more than 10 years?
A. I can't, sitting here today, recall when each one of them went in, but, in general, they went in in '87, in that time period.
Q. Okay. Would you agree or accept, subject to check, that each and every generating unit that is in extended reserve shutdown has been in that status for at least seven years?
A. That sounds reasonable.
Q. Okay. And, as you said, you're aware that some go back to the beginning of '87, early '86?
A. Yes.
Q. Okay. Would you turn to KMT Exhibit 1, page—oh, I'm sorry. Stay with page 8 of 10 for a second. I'm not going to talk about the numbers specifically, [102] but so the record's clear, this says, proposed return to service units by NPV. That's net present value, and then (investment plus five year operation and maintenance per kilowatt), correct?
A. Yes.
Q. And up along the left-hand column are the dollar amounts per kilowatt that the company estimates it would take to bring each of those units back on line, correct?
A. To bring them back on line and operate for a five-year period.
Q. Okay. So, this includes any capital investment that's required, any initial operation and maintenance, plus ongoing O&M for five years, present valued?
A. Yes.

Q. Okay. You didn't perform any of the analyses of what would cost to return these units to service; is that a fair statement?
A. That analyses was done by plant operations. I did not myself no, nor my staff.
Q. Well, at the time you reported to the Operating Committee as to what it would cost to return these units to service, you hadn't seen any of the studies that had been performed; is that correct.
A. That's correct.
Q. And, as of the time that you were deposed in this case on January 12, you still hadn't seen any of these studies; is that correct?
A. Only because I—all I needed from plant ops was the dollars. I didn't need to look at the studies myself.
Q. You didn't direct that these studies be performed, is that correct?
A. That's correct.
[103] Q. Now, these studies weren't performed by Entergy personnel, were they? They were performed by an outside contractor called Raytheon, Corporation; is that correct?
A. Some of the studies—I mean, some of the numbers that are in this presentation were developed by Entergy personnel, plant ops personnel. Those numbers were then refined by the use of an outside consultant called, Raytheon.
Q Well, let me ask you if this is a true statement: Some Entergy people actually went out, but it was more of a learning experience for them just to observe. But, as far as participating in the study, no Entergy people did it.
A. I believe that you're reading that from my deposition, and I was talking about my staff, not Entergy personnel. There were plant ops personnel that worked with Raytheon on this, but my staff went as a learning experience.
Q. Are you an engineer?
A. No.

Q. You wouldn't be qualified to perform any analysis as to what it would cost to return a generating unit to service; is that a fair statement?
A. That's correct.

MR. ZIMMERING: All right, Your Honor, I've got—Mr. Anderson, I'd like you to take a look at these. All three of these pieces of paper come out of data responses and all three of these pieces of paper have highly sensitive stamped all over them. And I apologize, Your Honor, particularly for this one, but we didn't reduce this in size. I believe Entergy may have, to make it difficult to read, but this wasn't our doing.

[104] MR ANDERSON: Oh, now, wait a while. If I get chided about enemy and stuff like that—that was a pretty cheap shot.

MR ZIMMERING: Let me tell you—let me identify these for the record. The page that says, "Assumptions" and has page two at the bottom, and the page that says "Entergy Return to Service Program Update of Estimate Dollars Per Kilowatt Total All Units"—both come out of the Raytheon Study that was provided to us in response to data request 4-12. The document with the relatively small print came out of data request—came in response to data request 4-10 which asks, "Please comply—provide complete work papers and supporting documentation for the NPV figures shown on page 8 of KMT Exhibit 1. Include a copy of the analysis on diskette in spreadsheet format." I'm open to suggestions how you want me to proceed, because I'm going to ask him about numbers.

MR. ANDERSON: Well, I guess it would depend on what you're going to ask him, Paul.

MR. ZIMMERING: I'm going to ask—Your Honor, I'm going to ask about the dollar figures that it's going to cost to bring these units out of extended reserve shutdown.

MR. ANDERSON: Are you going to be comparing, for example, a dollar figure on—

MR ZIMMERING: Yes.

MR ANDERSON: —out of the Raytheon to the other one? Can you just ask him about the differences that may exist between Raytheon and 4-10, or do you have to use the real numbers? I mean, if you've got to use the real numbers, then [105] I'll ask that this portion of the record be sealed.

MR ZIMMERING: That's okay, Your Honor.

JUDGE DEVITIS: Okay. Before we proceed, is there anyone present who is not privy to confidentiality agreement?

MR. ANDERSON: Mr. Chavanne. Mr. Chavanne has chosen to not sign.

MR JOHN CHAVANNE: Your Honor, I'll be glad to leave.

JUDGE DEVITIS: Thank you. We'll be sure to send someone out to let you know when it's completed.

MR ZIMMERMAN: Mr. Chavanne, before you leave, if I just do the Delta's on these?

MR ANDERSON: It's not a problem for me.

MR. ZIMMERING: The difference in costs. Let me try it that way and then maybe Mr. Chavanne can stay here. Okay?

MR. ANDERSON: And, in that event, Your Honor, I don't believe there's any need to seal the record if we're just talking about the Delta's.

MR. ZIMMERING: Okay. Let's take, first of all, the piece of paper marked "Proposed Return to Service Units"—the one on the small graph paper. Can you tell me what this document is designed to represent?

MR. TURNER: I believe that this document is to represent where the—or the breakdown of the numbers that went into

the chart that was presented to the Operating Committee in September.

Q. Okay. And the chart that was presented to the Operating Committee is your Exhibit 1, page 8 of 10?
[106] A. Yes.
Q. Okay. Now, these were not based upon the Raytheon study?
A. These were done prior to the Raytheon study being completed, that's correct.
Q. Okay. You delivered your presentation to the Operating Committee September—help me out here.
A. September 30.
Q. September 30—
A. 1997,
Q. Okay. And then you received the Raytheon report sometime in November of 1997?
A. I don't recall, but it's in that—it was sometime after September 30.
Q. Okay. Have you had another Operating Committee meeting since the time that you received the Raytheon report?
A. We had another meeting in October, and I don't recall whether we had the Raytheon report at that time. I don't think so.
Q. Okay. And so you haven't presented any figures from the Raytheon report to the Operating Committee yet?
A. No.
Q. Okay. Let's take a look at Neches Station Unit Number 5, okay?
A. Okay.
Q. I'm sorry. Let's look at Neches 8, okay? It's at the very top of the chart on the small graph, okay?
A. Okay.
[107] Q. It shows it's 105 megawatts.
A. That's correct.
Q. Okay. Now, you have a column called, "Return to Service Capital" and then you have a column called, "Start-up

Capital." Can you tell me what those two columns mean? I'm not asking for the dollar figures here.

A. Well, the first column is the capital investment to return the service to unit. And then there's—or return the unit to service. And the start-up capital, I'm not sure I understand the distinction between the two. To me, capital dollars to get the unit up and running are the same.

Q. Okay. So, some may be spent on what we would call capital or more long-term expenditures and some may be spent doing the immediate O&M necessary to get the unit going?

A. I guess so.

Q. As opposed to the third column in which says "Five-year NPV Investment and O&M." That's talking about ongoing O&M, correct?

A. I don't—okay, yes, the third column. Yes, that's—

Q. But the two columns we would look at to talk about what—to figure out what it's going to cost to get these units up and running are the return to service capital and the start-up capital, correct?

A. Yes.

Q. Okay. Now, I want you to take a look at the sheet marked "Highly sensitive." Excuse me, they're all marked highly sensitive. The one called, "Entergy Return to Service Program Update of Estimates." And you know what I should do right [108] now, let's mark the graph that we were just referring to, "Commission Staff Number 6." That's the one we were just referring to, Your Honor. Let's mark the large table, "Commission Staff Number 7." And, just so we get them all out of the way, let's mark the one that says, "Assumptions", Commission Staff Number 8. Your Honor, could I ask that we go into confidential mode? I'm sorry, Mr. Chavanne. I just think we need to actually talk about all the numbers, if that's—is that okay, Your Honor.

JUDGE DEVITIS: Yes.

MR ZIMMERING: Thank you.

(REPORTER'S NOTE: Confidential dialogue begins and is enclosed under separate cover.)

JUDGE DEVITIS: I might just inquire. Have we reached a point where we can invite Mr. Chavanne back in or are we continuing?

MR. ZIMMERING: Are these—let me ask. Are questions—the answers to LPSC 4-8 dealing with your ongoing expenses for the ERS units, is that confidential? If not, we can bring him back in.

MR. ANDERSON: Let me have just a moment, Your Honor, to look at 4-8.

JUDGE DEVITIS: Certainly. We'll take a short break.

(OFF RECORD)

(BACK ON THE RECORD)

JUDGE DEVITIS: Let's go back then.

MR. ZIMMERING: Thank you. The next exhibit is Commission Staff Number 9; is that a fair statement. Okay. Mr. Turner, Mr. Catlin is distributing a response [109] to LPSC 4-8, which I've marked as Commission Staff Number 9 entitled, "Fossil Operations Responsibility View O&M For ERS Units 1997 Actual and 1998 Budget." Am I reading this correctly that these are the amount of dollars that are spent—that were spent in 1997 for whatever upkeep is necessary on the ERS units?

MR TURNER: Well, with two exceptions: It also includes two units that are currently operating simply because we couldn't break it out. Mablevale Unit Number 3 is operating and that's included with Mablevale 1, 2 and 4, 22,401. Paterson Unit 5 is operating and that's included in the 188,289, Patterson 3 and 4.

Q. And that's simply because there are operational units physically sited at the same location with ERS units?
A. And the charges are not broken down by unit; it's by plant.
Q. Okay. With those two exceptions contained in the double asterisks and the triple asterisks and the two estimates, these are expenditures which are made notwithstanding that the units are in ERS? In other words, these are ongoing upkeep expenditures that necessary even though the units aren't currently running?
A. That's correct.
Q. Okay. Do you have any reason to believe that ELI is not including the costs associated with Monroe 10, 11 and 12 and Thibodeaux 9 in its cost of service that it uses for computing its formula rate plan filings?
A. I have no idea what is included and what is not included. I cannot even hazard a guess.
Q. Okay. Nobody has informed you that the company is eating these [110] expenditures, have they?
A. No one has told me one way or the other.
Q. Okay. Your Honor, if you would give me about one minute, I may be just about done.

JUDGE DEVITIS: Okay.

MR ZIMMERING: I'm done, Your Honor. Thank you very much, Mr. Turner.

JUDGE DEVITIS: Okay. Mr. Turner, would you please give me your understanding or definition of how you would decide what categories to include a unit when you're doing—that should be included in MSS-1 or not?

MR. TURNER: MSS-1, Section 10.02 of the system agreement was modified per the terms of FERC 415, 415-A.

Q. And when was that modified?
A. The date of the order—415 was issued August 5, 1997, and I'm not sure that I've got 415-A.

MR ANDERSON: I have 415-A, Your Honor. It's already in evidence. It was issued by the FERC on February 3, 1998.

MR TURNER: And page 3 of 10 of Exhibit KMT-1 is the language I lifted out and read to the Operating Committee that specifies the factors that the Operating Committee must consider in order to declare a unit that's in ERS as available under terms of MSS-1. I'll be glad to read that for you if you'd like.

JUDGE DEVITIS: Have you already testified to that earlier today?

MR. TURNER: It's in my testimony that was filed earlier. Yes, ma'am.

JUDGE DEVITIS: Thank you, Mr. Turner. Mr. Anderson.

[111] MR ANDERSON: Yes, I have a few questions. Thank you. Before I begin, however, Your Honor, I observed that Staff Exhibit Numbers 7 and 8 are two pages from a study called the Raytheon study that was provided in response to LPSC Data Request 4-12. As a matter of completeness, we would like to offer the entire study. It's been marked as highly sensitive, but the difference between putting in two sheets and putting in the entire study, which is about 3/8 of an inch thick, you know, in for a penny, in for a pound. And so we'd like to offer the whole thing, because we don't believe it's appropriate to just lift two pages out of the study and just submit those. I have the same comment with respect to Staff Exhibit Number 9, which is the second page of a two page data response to LPSC Data Request 4-8, and I would propose to mark for identification as the Raytheon study, ELI Exhibit—I believe my next number is 15, Your Honor. No, maybe it's 14. It's 15. I'm corrected. We would like to mark as ELI Exhibit 15 the entire Raytheon study which was appended to the company's response to the LPSC Data Request 4-12. We'd like to mark for identification as ELI Number 16 the entire response of the company to LPSC 4-8.

MR. ZIMMERING: I don't have any objection to 15. I have an objection to 16. The response to answer 4-8A, in my opinion, is simply self serving and if they wanted to get that in, they should've had a witness testify to it.

MR. ANDERSON: Your Honor, I respectfully submit that he doesn't get to just put in one piece of the answer. In fact, the piece that he attempts to put in is responsive to question B, and the response to B begins on the first page. So even though he may view our response as self serving, it is our response. And under—[112] whether you view it as opional completeness or whatever the term may be at the Louisiana Commission, if he's going to offer a portion of a response, we should be entitled to offer the entire response.

JUDGE DEVITIS: I'll accept into the record the LPSC Number 8 in its entirety.

MR ZIMMERMAN: I hate to interrupt you, Mr. Anderson. I may have neglected to move Commission Staff 5 through 9 into the record, and I would so move now while we're in this mode.

MR. ANDERSON: I believe 5 has gone in over my objection already.

JUDGE DEVITIS: That's correct. We had 6, 7, 8 and 9.

MR ANDERSON: My objections to 7, 8 and 9 cured by my having offered ELI Exhibits 15 and 16, and I have no objection to Staff Number 6 except that I also have trouble reading it.

JUDGE DEVITIS: I think we will all need magnifying glasses, yes. Are you going to offer a blown up—

MR. ZIMMERING: We'll be happy to undertake that, Your Honor.

MR ANDERSON: Your Honor, rather than blow up the photocopy, there must be a larger version of the original;

although, I don't know and I'm looking at my witness, and I don't know that he knows, because he testified this is not his piece of paper.

MR. TURNER: I suspect that there is.

MR ANDERSON: We will endeavor to obtain whatever generated this set of numbers in their original form and provide the larger copies to parties who have executed the confidentiality agreement and we'll submit it under seal for [113] the record.

JUDGE DEVITIS: I would appreciate that. While it is physically possible to read the numbers, it is (UNINTELLIGIBLE).

MR. ANDERSON: When you get to be my age, I don't even know that it's physically possible, Your Honor.

JUDGE DEVITIS: My bifocals must be better. I can read it.

MR. ANDERSON: Oh, okay. Well, they are better. No matter. We'll try to—let us first try to obtain the original copy and, failing which, we'll provide a blow up.

JUDGE DEVITIS: I think if you just make it a little bit larger (UNINTELLIGIBLE).

MR ANDERSON: All right and, with that, let me begin my re-direct of Mr. Turner. Oh, then before I do that, I'll ask my colleague—we now have 8 1/2 by 11 inch copies of the demonstrative for ELI Exhibits 12 and 13, and I'll ask that those be distributed to the parties and to the court reporter and to Your Honor.

RE-DIRECT EXAMINATION BY MR. ANDERSON:

MR. ANDERSON: Mr. Turner, do you have Staff Exhibit Number 6 in front of you?

MR. TURNER: That's the one that's hard to read?

Q. Yes, hard for me to read.

A. Yes, I have it.
Q. Do you have an understanding as to what organization within the company prepared that?
[114] A. The information was requested of plant ops. The numbers themselves came from plant ops.
Q. What is plant ops?
A. Plant ops is the organization who is physically responsible for the power plants. All the people that work in the plants and that sort of thing.
Q. Is that a euphemism for plant operations?
A. Yes.
Q. Okay. And are you in plant operations?
A. No.
Q. Were these data supplied to you?
A. Yes.
Q. Why?
A. In preparation for the Operating Committee meeting where we were—the Operating Committee needed to decide whether or not these units would be included in MSS-1—these ERS units would be included in MSS-l. One of the factors had to be—that needed to be considered was the cost of bringing these units back into service.
Q. All right. Now, take a look at Staff Exhibit Number 7.
A. That's the one that's labeled "Entergy Return To Service Program Update of Estimate"?
Q. Yes.
A. Okay.
Q. What does the dollar symbol "K" mean?
[115] A. It's in thousands of dollars.
Q All right. So, I should add three zeros to the left-hand side of the decimal point on all these numbers?
A. Right.
Q. Was this report prepared by you?
A. No.
Q. Does Monroe Station Unit Number 10 appear on Staff Exhibit 6 and Staff Exhibit 7?

A. Yes,
Q. Can you tell me if the combination of return to service capital and start-up capital on Staff Exhibit 6 is greater or smaller than the total for Monroe Station Unit 10 on Staff Exhibit 7?
A. Smaller.
Q. Smaller on which one?
A. Smaller on Staff 7 than on Staff 6.
Q. Is Monroe Station Unit 10 an ELI unit?
A. Yes.
Q. What if I asked you to make the same comparison for Monroe Station Unit 11?
A. Same answer. It's smaller on 7 than it is on 6.
Q. Okay. And what if I asked you to make that comparison for Monroe Station Unit 12?
A. It's smaller on 7 than it is on 6.
Q. What about Thibodeaux Station 9?
[116] A. It's smaller on 7 than it is on 6.
Q. And what are you comparing when you say its smaller on 7 than on 6?
A. I'm comparing—on Staff 7 I'm looking at the total most right-hand column that's labeled "Total" and on Staff 6 I'm looking at the column labeled "Five Year NPV."
Q. Okay. Now, instead of looking at the five year NPV, I want you to look at return to service capital and start-up capital. Do you see those columns?
A. Yes.
Q. If you compare the total of those two columns—
MR ZIMMERING: Excuse me. Could you hold on one second? I just lost you for a minute. Could you start that question again?

MR. ANDERSON: I'll be glad to.

MR ZIMMERING: Thank you.

MR. ANDERSON: I've understood your answers thus far, Mr. Turner, to be a comparison between Staff Exhibit

Number 7, the column marked, "Total" and Staff Exhibit Number 6, the column marked "Five Year NPV."

MR. TURNER: That's correct.

Q. Okay. Now, I'm going to ask you similar questions, but, in this case, I want to compare Staff Exhibit Number 7 total to the combination of two columns on Staff Exhibit 6. And those two columns are marked "Return to Service Capital" and "Start-Up Capital."
A. Okay.
Q. All right. With respect to Monroe Station Unit 10, which is larger: The [117] combination of the two columns on Staff Exhibit 6 that appear fourth and fifth from the left or the total column from Staff 7?
A. Staff 6 is larger.
Q. Okay. And if I ask you about Monroe Station Unit 11, what would your answer be?
A. Staff 6 is larger.
Q. All right. And if I ask you about Monroe Unit 12?
A. Staff 7 is larger.
Q. All right. And if I ask you about Thibodeaux Station—
A. Staff 7 is larger.
Q. All right. And I'm assuming that Thibodeaux Station on Staff 6 is number 9. Do you know one way or another?
A. I do not know. Hang on. I may have—no, I do not know.
Q. Do you have before you a copy of this one page out of the IRP that was—I don't know if a copy was ever provided to you.
A. I don't believe.
Q. All right. I'm going to provide a copy to you.

JUDGE DEVITIS: It's not provided to the court either.

MR. ANDERSON: Well, it hasn't been offered into evidence and it's probably the better part of valor that—since I'm not going to offer it. Am I correct that that analysis compares various strategic alternatives for the year 2005?

MR TURNER: Yes.

Q. Did the FERC, when it amended MSS-1, require the company to consider all [118] strategic alternatives in—as part of any criterion for the determination to be made with respect to the ERS units, MSS-1?

MR. ZIMMERING: I'll object. The FERC order says whatever it says.

MR ANDERSON: Well, let me rephrase the question.

JUDGE DEVITIS: All right.

MR ANDERSON: At the time that you made your recommendation—no, strike that. At the time that you made your presentation to the Operating Committee, was it your understanding that the FERC order required a consideration of these strategic alternatives?

MR TURNER: No.

Q Do you know how many pages there were to the 1995 IRP?
A. It's probably a half inch thick. I don't know how many pages.

MR ANDERSON: That's all we have, Your Honor. Thank you.

JUDGE DEVITIS: Thank you, Mr. Anderson.

MR. ZIMMERING: Nothing else, Your Honor.

JUDGE DEVITIS: Thank you, Mr. Turner.

MR TURNER: Thank you.

MR ANDERSON: Insofar as we lost Mr. Fontham, is this an appropriate place to stop for the day?

JUDGE DEVITIS: It was my understanding that the parties were wanting to conclude around 4:00. We appear to be close to that.

MR. ZIMMERING: We made that request. We'll take responsibility for that, Your Honor.

FORMULA RATE PLAN 1997 ANNUAL FILING
ENTERGY LOUISIANA, INC., (FORMALLY LOUISIANA POWER & LIGHT), EX PARTE IN RE: INVESTIGATION OF LOUISIANA POWER & LIGHT COMPANY'S RATES, CHARGES, SERVICE RENDERED AND OPERATIONS (FORMULA RATE PLAN)

DOCKET NUMBER U-40925

(Hearing held February 17, 1998 before ALJ Carolyn DeVitis)

WITNESS

BRUCE M. LOUISELLE-ENTERGY

* * * *

[37] that you all pile up, over the course of the year, this capital?

A. It isn't capital, Mr. Fontham. We don't pile up capital over the course of a year, and in fact, you've made a factual statement about a hypothetical that has no basis in reality. There is no adjustment proposed by company because no adjustment would be appropriate. To do so, in fact, would deny the company, further, the opportunity to recover its actual cost of capital.

Q. Okay. I'm going to switch over to another subject, this ERS subject. You're familiar with the system agreement; is that right.

A. Yes, sir.

Q. Now, the system agreement provides for the sharing of cost capacity; is that true?

A. Yes, sir. I'm sorry—reserve equalization?

Q. Yes

A. Yes. It does not provide for sharing of all capacity cost, no.

Q. Texas is over here and Arkansas is up here, Mississippi is over here. Louisiana here, and N.O. is here. (INDICATING

AT EASEL) Now, the company has operations in each one of thoses geographic areas; is that right?

A. Yes.

Q. And, the system agreement provides for the sharing of the cost of reserves in four or five companies in the different jurisdictions, right?

A. Yes.

Q. Okay. Now would you agree that historically, under the system agreement, before one company had to pay for another company's generators, that generator [38] had to be "available"?

A. That was a description of what capacity was included in the calculation, yes.

Q. And, the company, in the 1980's, decided to adopt a plan to put units into extended reserve shutdown, right?

A. Correct.

Q. Now, that program began in the mid-'80's; is that true?

A. That's my understanding, yes.

Q. And there are units that were put into extended reserve shutdown in the mid-'80's that were two, three years from retirement at that time, right?

A. I don't have those facts in front of me, but I believe that's accurate.

Q. And, the units that were put into extended reserve shutdown that were two or three years from retirement at that time, many of them are still in extended reserve shutdown, right?

A. I can't attest to when each of the—whatever it is—twenty units that are in PRS status now, when they were put in. May be that some were put in in 1987 are still in PRS status.

Q. Well, you're aware, Mr. Louiselle, that the system agreement has been in effect for four or five decades, right?

A. In different forms, yes.

Q. In different forms and, in different forms, the Entergy companies have been sharing the cost of their capacity for that long; is that true?

A. Sharing—you use the phase, "sharing the cost of capacity" and if you use it very loosely, I would agree with it. If you mean that is what the system agreement [39] calls for, then I would have to quibble with that phrase. But, if you just mean that by sharing the cost of capacity that there's a reserve equalization schedule in the system agreement; then I would agree.

Q. Well, would you agree with this? That all of these units that went into ERS status in the mid-1980's, they had been counted for determining a company's capability for the purpose of satisfying its capability responsibility for the purpose of determining whether it had to make payments or get receipts for their lives—their entire lives that they were in service.

A. I'm trying to remember the terms of the system agreement that predated the '82 system agreement, but if we talk about the current form of the system agreement, that's correct.

Q. Well, under the prior form of the system agreement, you still counted the megawatts of capability and the megawatts of load, didn't you?

A. Yes, but I'm thinking back to the original system agreement—it's called service schedule six or some like that. I'm not sure that that would apply—

Q. A dollar ten a megawatt, wasn't it, based on your capability responsibility and your load?

A. I can't remember the terms of that. In any event, at least from 1982 on, I know that that's an accurate statement. I think, under the '71 system agreement, that is accurate.

Q. Well, even though the system agreement required that a unit be available before somebody had to pay for it, like before, Louisiana had to pay for something in Arkansas, Louisiana would have to pay for something in Mississippi, a unit had [40] to be available to give Louisiana some service,

the company continued to count the units they had placed in extended-reserve shutdown as units that were available, right.?

A. I disagreed with the predicate, but the company did continue to count the ERS units as available. I do not believe it's accurate to say that under the system agreement, that the units that were included had to be available to provide service to a particular jurisdiction or company.

Q. Now, LP&L paid their amounts to Arkansas Power and Light and Mississippi Power and Light and had changes in its payments and receipts from NOPSI based on the existence of generating units that were basically in mothballs, right?

A. They were considered available, but they were in ERS status.

Q. Well, as a matter of fact, many of them were being cannibalized for parts and they were considered available by the operating committee, right?

A. Well, I agree with you that certain of the units, the parts were taken and put where—on other units as needed and then replaced the existing unit. Cannibalized is your term.

Q. They've been replaced? Some of the units in ERS?

A. Yes. Some of the equipment that was used for spare parts has been returned to the ERS unit.

Q. I see. After being used?

A. Or replaced.

Q. I see. Okay, now, we know that the FERC has denied the LPSC's request to go back to 1986, provide refunds for the period 1986 to the present, right?

[41] A. Yes.

Q. Okay. But, the FERC has also said that Entergy, when it counted these ERS units as available, made a blatant violation of the system agreement, right?

MR. ANDERSON: Objection, Your Honor. May I have the citation to the Order where it said "blatant violation"?

MR. FONTHAM: I'm asking the witness a question.

JUDGE DEVITIS: What is the nature of your objection?

MR. ANDERSON: If he's going to attribute language to the order, I would have liked to have been told where, in the order, he was referring to. Just so that I can try to keep the record straight. And that was the nature of my objection. If he wants to characterize it—

MR FONTHAM: I'll rephrase the question, Your Honor. It's not worth the—

MR ANDERSON: If he wants to characterize it, he can characterize it any way he wants to; but when he attributes it to the FERC, I would have liked to have had a citation, Your Honor. That's my objection.

JUDGE DEVITIS: All right.

MR. FONTHAM: Mr. Louiselle, do you recall whether the FERC held that the system agreement was clear and unambiguous?

MR. LOULSELLE: I have not memorized the Order, Mr. Fontham. If those words are in it, they are in it. I will look.

MR. ANDERSON: To save time, Your Honor, may I suggest that the Order is in the record and it speaks for itself. Whether Mr. Louiselle can remember exactly where something may be is really not important.

[42] MR. FONTHAM: I'll agree with that. The Order speaks for itself. You do agree, Mr. Louiselle, that the FERC held that Entergy was violating the system agreement, right?

MR. LOUISELLE: Yes.

Q. By including the ERS units as available in their calculation of the company's capability, right?
A. Correct.
Q. All right. And that required LP&L to make payments to other companies that had otherwise wouldn't have had to make, right?

A. Correct. Which the FERC found to be just and reasonable and not unduly discriminatory.
Q. Now, Mr. Louiselle, the—well, let me ask you what your position is. Is it alright to violate a tariff if you think that it might produce a just result to violate the law?
A. My position is that's for the Commission to decide.
Q. All right. Now, can you tell me when the FERC Order changing the system agreement was effective?
A. 1997.
Q. 1997. So, it's after the test year in this case, right?
A. Fall of 1997.
Q. Okay. So, all of the costs that were assessed to LP&L in the test year, were imposed on LP&L in violation of a tariff, right?
A. No, Mr. Fontham, not all the costs in the test year. A portion of the MSS—
[43] Q. All the costs that are in dispute were imposed on LP&L in violation of a tariff, right?
A. The FERC found that the tariff had been violated during that period of time, but that the rates were just and reasonable.
Q. Okay. But did you hear my question? That the cost [sic] that were imposed on LP&L for the ERS units in the test year were imposed in violation of a FERC tariff, right?
A. Resulted from a violation of the tariff.
Q Okay. And, you do understand that in than case, what the staff is proposing is to disallow those costs that were imposed on LP&L in violation of a tariff in the test year. Not all the way back to 1986, right?
A. Well, I understand—well, I'm a little bit confused about what the staff proposal is, because I haven't seen it articulated in testimony. But I believe that that is the current contention that since the FERC refused to order refunds for any period of time that the Commission staff now takes the position that it will extract the same amount for the test year from this Commission's setting of retail rates.

Q. Now, LP&L is as affiliate of Entergy, right?
A. Entergy Louisiana, yes, sir.
Q. And, Entergy Louisiana, Inc. is one of the Entergy subsidiaries, right?
A. Correct.
Q. And, Entergy basically operates its system on a single system basis, right?
A. Correct.
Q. So, the decision that LP&L should have to make these payments for these [44] units as if they were available, it was made by Entergy itself, right?
A. By the operating committee, yes.
Q. Okay. Do I understand this correctly? The company's position is that the Commission has to make ratepayers pay this cost that LP&L had to pay to its sister companies under the decision of the operating committee?
A. As affirmed by the FERC; yes, sir.
Q. Yes. Okay. So, it's the company's position that the Louisiana Public Service Commission, at the retail level, is required to make Louisiana rate payers to pay for a cost that was imposed on LP&L by its parent company in violation of a FERC tariff, right?

MR ANDERSON: Objection, Your Honor.

JUDGE DEVITIS: What's the nature of your objection?

MR ANDERSON: Mr. Louiselle referred to the decision as having been made by the operating committee, not by the parent company. Mr. Fontham, in asking the question, has mischaracterized Mr. Louiselle's answer.

MR. FONTHAM: I think the witness can take care of himself, Your Honor. You know, if Mr. Anderson wants to testify, he should save it for brief.

MR. ANDERSON: It's not a case of Mr. Louiselle taking care of himself. It's a case of trying to keep the record

straight and the operating committee is not Entergy Corporation. Those are separate—

MR FONTHAM: I think counsel knows full well that the operating committee never voted on this. It was all done by a guy—by—

MR ANDERSON: Now who's testifying?

[45] MR. FONTHAM: Well, you're the one who was just testifying.

JUDGE DEVITIS: I think that perhaps if we both revert to where we make only objections that are recognized in the standard objections, such as, hearsay, so on and so forth, we'll proceed that way. And that we don't need the testimony of either of the lawyers at this point. I will be very interested to hear the arguments that (UNINTELLIGIBLE) at the appropriate time. Please proceed.

MR. FONTHAM: Do your recall my question? (NO AUDIBLE RESPONSE) The company is asking this Commission to impose on Louisiana ratepayers a cost that LP&L paid, that Entergy Louisiana paid, as a result of a decision made by Entergy's operating committee to impose a cost in violation of a FERC tariff, right?

MR. LOUISELLE: That is not—that is a correct statement that the company should be entitled to recover those costs, but the company's position—my position is, that to the extent that the staff has an objection to these costs, the proper form is the Federal Energy Regulatory Commission, because these are costs incurred by Entergy Louisiana as a result of a FERC tariff.

Q. No, no. These weren't costs—are you saying that Entergy Louisiana got these costs that were imposed in violation of a tariff as a result of the tariff?
A. Sure. The costs that were incurred by Entergy Louisiana under MSS1 were as a result of a FERC tariff as you argued

that the only place one could get redress was at the FERC. The FERC determined that no redress was appropriate. That the rates actually incurred by these operating companies over the period 1987 thorough 1997 were just and reasonable and not unduly discriminatory.

[46] Q. Mr. Louiselle, do you see me trying to get redress back to 1986 here?

A. No, sir. You're trying to get redress (UNINTELLIGIBLE)

Q. (UNINTELLIGIBLE) what I'm trying to do is point out that you all are including a cost in your cost of service that was imposed on LP&L in violation of a tariff.

A. Mr. Fontham, you are trying to get a refund for the period 1996. You are trying, apparently, to recognize that the rates charged currently under MSS1 are pursuant to a valid FERC tariff. I thought rate making was supposed to be prospective and that we're trying to determine the cost to be incurred during the rate effective period. But, you are trying to go back in time and get a retroactive refund for the calendar year 1996.

Q. Are you proposing that we should update the test year to the rate effective period in this case?

A. No, sir. I'm talking about—rates are prospective.

Q. Let me ask you this, Mr. Louiselle, you're aware that the FERC establishes rates for capability equalization that includes capability beyond the ERS unit; right? The reserve equalization.

A. You say the FERC?

Q. Yes, sir.

A. Are you referring to the system agreement or just generally?

Q. The system agreement. System agreement as regulated by the FERC.

A. Including capability?

Q. Includes capability. You're aware of that?

[47] A. Yes, sir.

Q. Are you aware the fact that curtailable load—okay—if a particular company has a whole bunch of curtailable load, but it happens to be on system at the time of the monthly peak, all right?

A. Yes, sir.

Q. The FERC counts that as if it were any other load.

A. That's correct. Under the system agreement.

Q. Under the system agreement. Entergy's proposal to the FERC, right?

A. Yes, sir.

Q. Okay. And the FERC has approved that, right?

A. Yes.

Q. And, so the fact of the matter is, that LP&L has to pay the other companies the full cost of capacity for any curtailable load that happens to be on the system at the peak, right?

A. It pays—not the full cost of capacity, it pays—makes a reserve equalization payment based upon the formula that's in the system agreement. It doesn't include all capacity.

Q. Well, it gets no credit. It gets absolutely no credit for the fact that that load is curtailable, right?

A. Under the system agreement, that's correct.

Q. Is it your view then, Mr. Louiselle, that because the FERC regulates that and the FERC has decided that it's just and reasonable to give no credit for curtailable load, is it your view that this Commission can give no credit to a curtailable [48] customer for the fact that it's curtailable?

A. The Commission can set rates for the retail customers, consistent with its principles and that are just and reasonable and not unduly discriminatory. If it wishes to provide a credit for that, it can do so. That does not mean then, the Commission has the authority to unilaterally change a FERC tariff.

Q. Okay. So, let me see if I understand this, Mr. Louiselle. If a FERC tariff says that the system, which is planned on a

system basis—if a FERC tariff says that the load on that system is—if it's curtailable, is entitled to no credit and that LP&L must pay the full cost associated with that, the full, you know, charge, under the system agreement, even if it's load is curtailable at the time of the peak. It's your view that the Public Service Commission can do something different and give credit for curtailable load, right?

A. In retail rates?

Q. Yes.

A. Certainly it can.

Q. Okay. But, it's your view that if the FERC has a tariff that the company violates and imposes costs on LP&L in violation of the tariff, this Commission has no right whatsoever to say that the retail rate effective that is, we're not passing it through to the ratepayer, right?

A. No, sir. My position is that the Commission has full authority to go to the proper forum and articulate its case and determine whether refunds are appropriate or not appropriate, and the Commission did precisely that in the ERS case.

Q. Mr. Louiselle, do you have any special experience with regard to what should [49] happen at the retail level with respect to cost that come from the system agreement? Like way back, you know, you went back 31 years, well, let's go back about 21 years. Can you remember what you recommended in 1977 that this Commission do with respect to the capability of LP&L and the sales that it was making to other companies?

A. I do recollect that.

Q. Uh, huh. And, did you recommend that the Commission accept the charges as they were imposed by the FERC under the system agreement as the final just and reasonable remedy?

A. I had filed testimony, initial testimony, indicating that the rate that was paid by Arkansas for energy coming out of

Louisiana was not—have a large enough margin and proposed an adjustment. I believe that was then subsequently changed.

Q. Well, as a matter of fact, in that case it stuck. Is that right, Mr. Louiselle?

A. Yes; but then it was changed.

Q. Yeah. Well, in that case, though, you were the person who was recommending to the Public Service Commission that even though there's a FERC tariff, and even though the Public Service Commission can go to the FERC and it has a forum and all that, that it should not allow Arkansas, under that tariff, to pay less than a fair cost for the capacity in this Commission's view, right?

A. Yes, sir.

Q. Thank you, Mr. Louiselle. That's all I have. Thank you, Your Honor.

JUDGE DEVITIS: Mr. Raborn? (NO AUDIBLE RESPONSE) Mr. Anderson?

[50] MR ANDERSON: Yes. Thank you.

RE-DIRECT EXAMINATION:

MR. ANDERSON: With respect to the ERS matters that counsel for the Commission staff has raised, is the reserve—what is the reserve equalization payment?

MR LOUISELLE: It is a monthly charge that changes every month, dollar amount, total dollar amount. In the case of Entergy Louisiana, because it is a short company—that is, its relationship between capability and load responsibility vis-a-vis those relationships on the system indicate that it is a short company. It then makes a monthly payment based upon a formula contained in the system agreement to equalize reserves relative to its load responsibilities so that it makes this payment and it's calculated based upon intermediate units, oil and gas units, that are physically owned by the companies that are long on capacity.

Q, How does the reserve equalization charge get calculated; through what device?

A. It is a intersystem bill and this bill calculates the MSSl as well as MSS2, 3, all the service schedules. Calculates it monthly predicated on the formula that's contained in the system agreement.

Q. Which service schedule applies to reserve equalization?

A. Service schedule MSS1.

Q. How does reserve equalization relate to a payment for capacity?

A. It is not a payment for capacity. The payment does not entitle the payor to any of the output of the units that are used to calculate its value.

Q. Your Honor, there was much talk this morning in the cross examination of Mr. [51] Louiselle about the system agreement. I know that service schedule MSS1 is in the record, but I'm not sure that the system agreement itself is in the record, and I would suggest that we should probably put a copy of the entire system agreement in the record. I have not done so, but I can have a clean copy prepared and tender it.

MR. FONTHAM: No objection.

JUDGE DEVITIS: How voluminous is it?

MR ANDERSON: About that thick. (INDICATING)

JUDGE DEVITIS: All right.

MR ANDERSON: In that event, Your Honor—

JUDGE DEVITIS: What designation would you make that?

MR. ANDERSON: ELI Exhibit 18.

JUDGE DEVITIS: I believe we have an 18, do we not?

MR ANDERSON: Then, I will make it ELI Exhibit 19. Now, turning to the capital structure issue, Mr. Louiselle, what is a yield to maturity calculation?

MR. LOUISELLE: Yield to maturity calculation, which is the

method that is used or has been used in the case of Entergy Gulf States, is a method of determining the cost of debt that is, rather than relying upon a straight line amortization, basically relies upon a non-straight line. It is a present value concept and it basically calculates a internal rate of return, if you will, that would allow for a constant payment over time to be made up of varying amounts of amortization of the difference between the gross and the net proceeds.

Q. An internal rate of return on what?

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